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ENVIRONMENTAL ASSESSMENT BOARD

VOLUME: 228

DATE: Tuesday, August 21, 1990

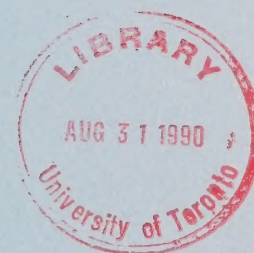
BEFORE:

A. KOVEN

CHAIRMAN

E. MARTEL

MEMBER



FOR HEARING UPDATES CALL (TOLL-FREE): 1-800-387-8810

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HEARING ON THE PROPOSAL BY THE MINISTRY OF NATURAL
RESOURCES FOR A CLASS ENVIRONMENTAL ASSESSMENT FOR
TIMBER MANAGEMENT ON CROWN LANDS IN ONTARIO

IN THE MATTER of the Environmental
Assessment Act, R.S.O. 1980, c.140;

- and -

IN THE MATTER of the Class Environmental
Assessment for Timber Management on Crown
Lands in Ontario;

- and -

IN THE MATTER OF a Notice by the
Honourable Jim Bradley, Minister of the
Environment, requiring the Environmental
Assessment Board to hold a hearing with
respect to a Class Environmental
Assessment (No. NR-AA-30) of an
undertaking by the Ministry of Natural
Resources for the activity of timber
management on Crown Lands in Ontario.

Hearing held at the offices of the Ontario
Highway Transport Commission, Britannica
Building, 151 Bloor Street West, 10th Floor,
Toronto, Ontario, on Tuesday, August 21st,
1990, commencing at 9:00 a.m.

VOLUME 228

BEFORE:

MRS. ANNE KOVEN
MR. ELIE MARTEL

Chairman
Member

A P P E A R A N C E S

MR. V. FREIDIN, Q.C.)	
MS. C. BLASTORAH)	MINISTRY OF NATURAL
MS. K. MURPHY)	RESOURCES
MR. B. CAMPBELL)	
MS. J. SEABORN)	MINISTRY OF ENVIRONMENT
MS. B. HARVIE)	
MR. R. TUER, Q.C.)	ONTARIO FOREST INDUSTRIES
MR. R. COSMAN)	ASSOCIATION and ONTARIO
MS. E. CRONK)	LUMBER MANUFACTURERS'
MR. P.R. CASSIDY)	ASSOCIATION
MR. H. TURKSTRA	ENVIRONMENTAL ASSESSMENT BOARD
MR. E. HANNA)	ONTARIO FEDERATION OF
DR. T. QUINNEY)	ANGLERS & HUNTERS
MR. D. HUNTER)	NISHNAWBE-ASKI NATION
MS. N. KLEER)	and WINDIGO TRIBAL COUNCIL
MR. J.F. CASTRILLI)	
MS. M. SWENARCHUK)	FORESTS FOR TOMORROW
MR. R. LINDGREN)	
MR. P. SANFORD)	KIMBERLY-CLARK OF CANADA
MS. L. NICHOLLS)	LIMITED and SPRUCE FALLS
MR. D. WOOD)	POWER & PAPER COMPANY
MR. D. MacDONALD	ONTARIO FEDERATION OF LABOUR
MR. R. COTTON	BOISE CASCADE OF CANADA LTD.
MR. Y. GERVAIS)	ONTARIO TRAPPERS
MR. R. BARNES)	ASSOCIATION
MR. R. EDWARDS)	NORTHERN ONTARIO TOURIST
MR. B. McKERCHER)	OUTFITTERS ASSOCIATION

APPEARANCES: (Cont'd)

MR. L. GREENSPOON)	NORTHWATCH
MS. B. LLOYD)	
MR. J.W. ERICKSON, Q.C.)		RED LAKE-EAR FALLS JOINT
MR. B. BABCOCK)	MUNICIPAL COMMITTEE
MR. D. SCOTT)	NORTHWESTERN ONTARIO
MR. J.S. TAYLOR)	ASSOCIATED CHAMBERS OF COMMERCE
MR. J.W. HARBELL)	GREAT LAKES FOREST
MR. S.M. MAKUCH)	
MR. J. EBBS		ONTARIO PROFESSIONAL FORESTERS ASSOCIATION
MR. D. KING		VENTURE TOURISM ASSOCIATION OF ONTARIO
MR. D. COLBORNE)	GRAND COUNCIL TREATY #3
MS. S.V. BAIR-MUIRHEAD)	
MR. R. REILLY		ONTARIO METIS & ABORIGINAL ASSOCIATION
MR. H. GRAHAM		CANADIAN INSTITUTE OF FORESTRY (CENTRAL ONTARIO SECTION)
MR. G.J. KINLIN		DEPARTMENT OF JUSTICE
MR. S.J. STEPINAC		MINISTRY OF NORTHERN DEVELOPMENT & MINES
MR. M. COATES		ONTARIO FORESTRY ASSOCIATION
MR. P. ODORIZZI		BEARDMORE-LAKE NIPIGON WATCHDOG SOCIETY

APPEARANCES: (Cont'd)

MR. R.L. AXFORD	CANADIAN ASSOCIATION OF SINGLE INDUSTRY TOWNS
MR. M.O. EDWARDS	FORT FRANCES CHAMBER OF COMMERCE
MR. P.D. McCUTCHEON	GEORGE NIXON
MR. C. BRUNETTA	NORTHWESTERN ONTARIO TOURISM ASSOCIATION

I N D E X O F P R O C E E D I N G S

	<u>Page No.</u>
Submissions re FFT site visit	41402
 <u>DALE MUNRO,</u> <u>WAYNE DOUGLAS YOUNG,</u> <u>RICHARD FRY,</u> <u>LEN SUOMU,</u> <u>MICHAEL DEAN INNES, Resumed</u>	 41456
Continued Cross-Examination by Mr. Freidin	41462
Cross-Examination by Mr. Campbell	41487
Re-direct Examination by Mr. Cosman	41625

I N D E X O F E X H I B I T S

<u>Exhibit No.</u>	<u>Description</u>	<u>Page No.</u>
1286A	Supplementary documentation form for operations in areas of concern, AOC No. 16, found on base map 506934.	41463
1286B	Letter of August the 1st, 1990 from Mr. J.T. Taylor, District Manager of Red Lake District, to Mr. Dave Baird of Boise Cascade Canada Limited.	41463
1287	Two-page comparison of tables that would be produced through the Industry's proposed timber management planning process, submitted by MOE.	41496

1 ---Upon commencing at 9:08 a.m.

2 MADAM CHAIR: Good morning. Please be
3 seated.

4 Good morning, Mr. Lindgren.

5 MR. LINDGREN: Good morning, Madam Chair,
6 Mr. Martel.

7 I believe that Mr. Cassidy or perhaps Mr.
8 Cosman has some material that they would like to file
9 before I commence my submissions.

10 MADAM CHAIR: All right. Mr. Cosman?

11 MR. COSMAN: Yes. Thank you, Madam
12 Chair. I will not repeat what I said when we last met,
13 but I would like to put before you a bound volume of
14 the relevant material, I suggest.

15 Madam Chair, just so you see what you
16 have, if you turn to the index and circle No. 4 on the
17 index. No. 4 is the transcript of my submissions last
18 Wednesday. So in terms of the reasons and arguments
19 that I made without repeating them today you have them
20 right here at Tab 4 of this transcript.

21 Tabs 1, 2 and 3 include the previous
22 rulings and directions of the Board with respect to
23 site visits, Tab 5 is the Forest for Tomorrow's
24 suggested sites, Tab 6 is our suggested sites and Tab 7
25 is the Board Rule of Practice No. 39 with respect to

1 site visits.

2 The principal point that I make is that
3 the Board, with respect to its past site visits,
4 reserved the right to say what it would see. That, in
5 my submission, is quite proper and is how it should be
6 done here after hearing the submissions of the parties
7 as to what they want the Board to see.

8 We are concerned that the Board will not
9 be given a fair and balanced picture. The Board is
10 seeing the Domtar Forest Management Agreement Unit and
11 we will have on that site visit a representative of
12 Domtar who is knowledgeable about the site and who will
13 be able to answer questions that the Board may wish to
14 pose.

15 So we are asking you as part of this site
16 visit to see the sites that we have identified in the
17 materials before you. I will reserve any other
18 comments until after I've heard my friend and I will
19 deal with it in reply.

20 MADAM CHAIR: Thank you, Mr. Cosman.
21 Shall we make this an exhibit?

22 MR. COSMAN: I don't think it's
23 necessary. It is a summary of legal materials rather
24 than evidence at the hearing and it's really for your
25 convenience. I've pulled the transcripts together

1 rather than have everyone hunt back through the large
2 volumes of transcripts.

3 MADAM CHAIR: Thank you, Mr. Cosman.

4 Will any of the other parties have
5 anything to say about the site visit, the discussion
6 this morning?

7 MR. FREIDIN: I will.

8 MADAM CHAIR: Mr. Freidin.

9 MR. CAMPBELL: Perhaps briefly.

10 MADAM CHAIR: Thank you.

11 Mr. Lindgren?

12 MR. LINDGREN: Thank you, Madam Chair.

13 For the record, I would like to indicate that this
14 morning I am being assisted by Mr. Cliff Prophet.

15 Madam Chair, last week Mr. Cosman raised
16 certain objections and requested certain directions
17 concerning the site visit proposed by FFT and it is
18 important to note that Mr. Cosman did not object to the
19 visit per se, in fact, Mr. Cosman supported our request
20 that this particular site visit be conducted. That's
21 not the issue today.

22 However, Mr. Cosman did go on to express
23 some concern as to how the visit is to occur and he
24 also requested that some additional stops be included
25 on the proposed tour.

1 Now, Mr. Cosman also referred the Board
2 to an extract from the Sopinka and Letterman text on
3 evidence which he has indicated is somehow determinant
4 of this issue. We disagree with that proposition, as I
5 will explain in a few moments.

6 We've had an opportunity to review the
7 transcript and the relevant case law and we strongly
8 object to the limitations being proposed by my friend
9 with respect to our evidence.

10 Now, Mr. Cosman, as you will recall,
11 Madam Chair, Mr. Martel, has invited the Board to
12 impose certain groundrules with respect to this
13 particular tour. He has suggested, for example, that
14 our witness not be permitted to editorialize or present
15 any opinions as to what is being viewed on this visit.

16 Mr. Cosman has also suggested that other
17 parties be permitted to respond factually to what the
18 FFT witness might say; thirdly, Mr. Cosman has
19 suggested that other parties be permitted to point out
20 other items of interest to the Board during the FFT
21 site visit; and, finally, Mr. Cosman suggested that
22 there should be no cross-examination in the field
23 during this visit.

24 Now, we agree with his groundrule that
25 there should be no cross-examination in the field since

1 there is ample time, ample opportunity to conduct
2 cross-examination back in the hearing room, but we
3 strongly disagree with the other three groundrules
4 proposed by Mr. Cosman and we submit that they are not
5 supportable in law and they must be firmly rejected by
6 this Board.

7 Madam Chair, if I could, I would put the
8 issue simply as this: Does FFT have the right to
9 conduct and present this visit as part of its evidence
10 during this case. That's the issue as we see it. If
11 the Board answers that question in the affirmative,
12 then it follows that the limitations proposed by Mr.
13 Cosman represent an unwarranted and unnecessary
14 interference with FFT's right to call and present its
15 evidence in this case.

16 Let me be very clear about our position
17 in this matter, Madam Chair. FFT is entitled, as a
18 matter of law, to present the visit as part of its case
19 without the constraints suggested by Mr. Cosman. In
20 support of that position, Madam Chair, I would be
21 making two principal submissions.

22 The first is that at common law
23 information obtained during a visit or site inspection
24 is admissible as evidence in and of itself and,
25 therefore, can form part of a party's case; and,

1 secondly, aside from the common law, it is our position
2 that this Board has the statutory discretion, if not
3 the duty, to admit site visit evidence as part of a
4 party's case.

5 I will attempt to be brief, Madam Chair,
6 in light of the other constraints that we have today.
7 Let me begin by examining the common law on this
8 matter.

9 Now, last week Mr. Cosman referred the
10 Board to page 338 of the Sopinka text and he went on to
11 quote from a 1901 English decision on what taking a
12 view means and this is the London General and Lavell
13 case, and Mr. Cosman went on to indicate that that
14 decision has been accepted by the Ontario Court of
15 Appeal in the Chambers and Murphy case and that this
16 represents the law in Ontario today.

17 What Mr. Cosman did not do is turn the
18 page, as I were, in the Sopinka text and he did not
19 refer the Board to the reservations expressed by
20 Sopinka and Lederman about the soundness of the Lavell
21 decision. I would like at this time to file the entire
22 extract from Sopinka and Lederman on views and site
23 visits.

24 Now, Mr. Cosman referred to the middle of
25 page 383, that's where we find the reference to London

1 General and Lavell and the acceptance or the apparent
2 acceptance of that dictum by the Ontario Court of
3 Appeal. I would like to refer the Board to the
4 following page, page 384, where Sopinka and Lederman
5 indicate that:

6 "Recent cases in England have
7 eliminated the distinction between the
8 examination of things in court and taking
9 a view of places and things outside the
10 courtroom many. It is now accepted in
11 England that the judge is entitled to
12 form his own judgment 'on the real
13 evidence of a view'. In Canada the
14 Courts of Appeal of Manitoba, Alberta and
15 Newfoundland have ruled that a judge,
16 taking a view, can regard what he sees as
17 evidence.

18 "Although, in practice, the
19 distinction between the two lines of
20 cases may not be of great moment, it is
21 unlikely that the Supreme Court of Canada
22 will find the reasoning in *Chambers v.*
23 *Murphy* persuasive when next it is called
24 upon to deal with the point."

25 In effect, Madam Chair, what has happened

1 is that the Lavell decision has been effectively
2 overruled in England and generally disregarded
3 throughout Canada.

4 For example, we see in footnote 224 on
5 page 384 a reference to Buckingham and Daily News.
6 Madam Chair, this is the English case that has
7 effectively overruled the earlier decision in Lavell.
8 In the Buckingham case, at the invitation of the
9 parties, the court visited the site of an industrial
10 accident and the plaintiff demonstrated how the
11 machinery worked and the English Court of Appeal held
12 that the machinery was itself an exhibit at the
13 hearing, even though it couldn't be physically moved
14 into the hearing room and the court also held that the
15 plaintiff's demonstration of the machinery was itself
16 evidence and it could be relied upon by the court.

17 In the following footnote, 225, we see a
18 reference to the Meyers case. I don't intend to review
19 these in any detail, but I would like to give you
20 somewhat of a flavour of some of these Canadian
21 decisions which, again, do not follow Lavell.

22 In the Meyers and Government of Manitoba
23 case, it was held that a judge could visit the scene of
24 an automobile accident and the judge could rely on his
25 own view to reject evidence of other witnesses.

1 In the following footnote, 226,
2 there is a reference to the Clark and Edmonton case.
3 There the Alberta Supreme Court inspected a bank of the
4 Saskatchewan River and relied upon that evidence to
5 make a factual finding that the plaintiff's land had
6 accumulated by reason of deposit of sand from the
7 river. It's not material, but the fact is the court
8 was entitled to take a view and rely upon it. The view
9 was evidence in and of itself.

10 The following footnote, 227, is the Power
11 and Winter case. There the Newfoundland Supreme Court
12 again visited the site of an automobile accident to
13 take measurements and they also conducted experiments
14 with the defendant's car. These are the two judges
15 involved. Again, another indication it is permissible
16 to go out to the field, conduct these experiments, look
17 at what happened or what may have happened and the
18 court can rely upon that as evidence.

19 I should also indicate that since Sopinka
20 and Lederman was published in 1974 there have been
21 other cases throughout Canada which have treated
22 information from site inspections as evidence. I don't
23 propose to review any of those at this point, but if
24 this Board believes it is necessary to hear further
25 evidence -- or further argument or even written

1 submissions, we are certainly prepared to examine these
2 cases as well.

3 There is, however, one case that I would
4 like to refer to and it's Tameshwar and The Queen. It
5 is a decision of the Privy Council dated 1957. The
6 cite is 1957, appeal cases page 476.

7 Very simply -- well, perhaps I will
8 distribute it to the parties and to the Board.

9 MADAM CHAIR: Mr. Lindgren, do you want
10 these made exhibits?

11 MR. LINDGREN: I don't believe that's
12 necessary. We haven't been doing that in other
13 motions.

14 In this case, Madam Chair, the jury took
15 a view of a crime scene without the judge present and
16 the complainant and other witnesses went through
17 demonstrations of apparently what happened. You can
18 see on page 476 in the headnote that the Privy Council
19 held that that view was in fact part of the trial, part
20 of the evidence and could be relied upon.

21 The important part of the case or part of
22 the decision for the purposes of this motion is found
23 at page 484. At the top of the page there is a
24 paragraph that starts:

25 "It is very difficult when a witness

1 demonstrates to the jury at the scene of
2 a crime. By giving a demonstration he
3 gives evidence just as much as when in
4 the witness-box he describes the place
5 in words or refers to it on a plan. Such
6 a demonstration on the spot is more
7 effective than words can ever be because
8 it is more readily understood."

9 Skipping down a couple of lines:

10 "He will not, as a rule, go stolidly
11 to the stop without saying a word. To
12 make it intelligible he will say at least
13 'I stood here' or 'I did this,' and,
14 unless held in check, he will start to
15 give his evidence all over again as he
16 remembers with advantages what things he
17 did that day."

18 Skipping down to the next paragraph:

19 "In England the Court of Appeal has
20 clearly held in civil cases that a view
21 coupled with a demonstration is part of
22 the evidence."

23 And the court goes on to review some
24 cases which stand for that proposition and that is the
25 proposition, Madam Chair, that we support and present

1 to you. A view, site visit, an inspection coupled with
2 a demonstration is part of the evidence, it can form
3 part of a party's case and the trier of fact can rely
4 on it.

5 Now, Mr. Cosman may respond that the
6 Tameshwar decision and, in fact, the other decisions in
7 the footnotes in Sopinka are not Ontario cases and that
8 Chambers and Murphy is still the law in this province.
9 However, it must be noted that Chambers itself followed
10 the English decision of Lavell which, as I have just
11 indicated, has been overruled in England.

12 Secondly, it must be noted that in
13 Chambers the court was interpreting Section 87 of the
14 Juror's Act which was subsequently repealed. The court
15 was also construing rules 266 and 267 of the then
16 existing Rules of Practice. Those rules have been
17 dramatically changed by the current rule, Rule 52.05 of
18 the Rules of Civil Procedure. In short, Madam Chair,
19 Mr. Martel, the statutory basis underlying Chambers has
20 been dramatically changed.

21 The third point I would make in relation
22 to Chambers is that the soundness of the decision
23 itself is certainly open to question in light of more
24 recent Ontario Court of Appeal decisions, such as the
25 decision of Allen and the Town of Caledonia. That's a

1 Court of Appeal decision dated 1965 and citation is one
2 Ontario Report 39.

3 Now, unfortunately I did not make
4 photocopies of that case, but essentially the
5 arbitrator in that case was permitted by the court to
6 take his own view of the property in question. He was
7 permitted to base his decision on that evidence.
8 Therefore, in light of those developments in the case
9 law and in light of the current Canadian approach to
10 views or site inspections, it is our submission that
11 Chambers can no longer be regarded as sound law in this
12 province and, in any event, that decision or indeed the
13 Lavell decision is hardly binding on this Board in this
14 case.

15 After all, it is important to recall that
16 the Lavell case and the Chambers case were both civil
17 cases. They were not administrative cases. In other
18 words, those decisions involved the adjudication of
19 courts not tribunals and those courts were essentially
20 dealing with private matters as between private
21 litigants.

22 On that other hand, in his hearing, as
23 you know, Madam Chair, Mr. Martel, the Board is not
24 deciding a dispute as between the parties. Instead,
25 the Board is considering matters of broad public

1 interest and is being called upon to make a decision as
2 consistent with the expression of the public interest
3 that we find in Section 3 of the Environmental
4 Assessment Act.

5 In short and without restating the
6 obvious, Madam Chair, there are fundamental differences
7 between civil proceedings in the courts and
8 administrative hearings before tribunals such as the
9 the Environmental Assessment Board and it is for this
10 reason that we submit that the common law rules
11 developed in the civil context are not applicable
12 holus-bolus to specialized administrative hearings and,
13 as well, we would submit that this Board should be
14 particularly wary of applying the common law as defined
15 by Mr. Cosman where such an application would, in
16 effect, deprive this Board of important and relevant
17 evidence and opinions.

18 In addition, Madam Chair, we would submit
19 that the common law, again as defined by my friend Mr.
20 Cosman, has been superseded by recent statutory and
21 regulatory developments in Ontario, and this brings me
22 to my second submission that I made earlier; that is,
23 that the Board has a statutory discretion or duty to
24 admit site visit evidence as part of a party's case.

25 Now, the starting point for this

1 submission, Madam Chair, Mr. Martel is the Statutory
2 Powers Procedure Act. I have copies available for the
3 Board. There are two section that are relevant to this
4 discussion, Madam Chair, Mr. Martel. The first is
5 Section 10(b) and there we find an indication that a
6 party to proceedings may at a hearing call and examine
7 witnesses and present his arguments and submissions.

8 Madam Chair, this codifies or entrenches
9 the right of a party to present his case. That right
10 is not limited or qualified in any way, shape or form
11 as is the right to examine cross-examine in Section
12 10(c). Madam Chair, it is our submission that Section
13 10(b) certainly allows a party or guarantees that a
14 party can call and present his evidence as he sees fit.

15 The second and perhaps more important
16 section in the Statutory Powers Procedure Act is
17 Section 15(1). That section indicates that:

18 "Subject to subsection (2) and (3), a
19 tribunal may admit as evidence at a
20 hearing, whether or not given or proven
21 under oath or affirmation or admissible
22 as evidence in a court,
23 (a) any or testimony; and
24 (b) any document or other thing..."

25 I want to stress "or other thing,

1 "...relevant to the subject matter of
2 the proceedings and may act on such
3 evidence, but the tribunal may exclude
4 anything unduly repetitious."

5 And Section 2 goes on to outline some
6 exceptions that are not applicable in this instant
7 case.

8 Madam Chair, Mr. Martel, given the
9 extremely broad wording of Section 15(1)(a) and (b), it
10 is our submission that this section represents a
11 legislative rejection of the limiting evidential rules
12 that have developed at common rule, such as the hearsay
13 rule or the rule on court views cited by Mr. Cosman,
14 although I am reluctant to call that a rule in light of
15 the unsettled nature of the case law that I mentioned
16 earlier.

17 In any event, Section 15 clearly confers
18 broad discretion upon this Board to admit evidence even
19 in the face of a common law prohibition, although,
20 again, I must emphasize we do not believe that there is
21 a common law prohibition in this case.

22 Now, in addition to the Statutory Powers
23 Procedure Act, the Board's own rules provide further
24 statutory discretion to permit the proposed tour as
25 evidence. The first section that I refer to is Section

1 4 of the Board's rules.

2 MADAM CHAIR: You left that part out, Mr.
3 Cosman.

4 MR. COSMAN: Sorry?

5 MADAM CHAIR: You left Section 4 out of
6 the material.

7 MR. LINDGREN: That's right. His
8 document only reproduces Section 39 of the rules.

9 MADAM CHAIR: All right. I don't have my
10 rules in front of me.

11 MR. CASSIDY: I have a copy.

12 MADAM CHAIR: Thank you very much, Mr.
13 Cassidy.

14 MR. LINDGREN: For the benefit of the
15 other parties, Madam Chair, I will simply read the
16 section. The section provides:

17 "Where any matter arises during the
18 course of any proceeding that is not
19 contemplated by these rules, the Board
20 may do whatever is necessary and
21 permitted by law to enable it to
22 effectively and completely adjudicate on
23 the matter before it."

24 MR. COSMAN: That's why I left it out.

25 MR. LINDGREN: Well, I will get to that

1 point, Mr. Cosman.

2 Now, it is difficult to conceive how this
3 discretion in Section 4 could be more broadly worded
4 and we submit that the proposed tour is, in the words
5 of the section, necessary and permitted by law and it
6 will certainly enable the Board to fully and
7 effectively adjudicate upon the matters before it.

8 I would also draw the Board's attention
9 to Section 5. Again, it provides flexibility -- or it
10 provides for flexibility on the part of the Board and
11 it essentially provides that the Board is not bound by
12 the rules and it can certainly dispense with compliance
13 with any rules or any directions previously issued.

14 Now, the beginning of Section 4 indicates
15 that it is limited to situations which are not
16 contemplated by the Board rules, and it is clear that
17 the Board does have a rule pertaining to site visits
18 and this is the rule that I believe my friend is
19 referring to and that is Rule 39(1). That has been
20 produced in my friend's material at Tab 7 and we find
21 this at the top of the page. Section 39(1) simply
22 provides that:

23 "The Board may make one or more site
24 visits or property inspections."

25 Madam Chair, Mr. Martel, that's

1 permissive language. It simply allows the Board to go
2 site visits or to conduct property inspections. It is
3 not an exhaustive code of conduct, nor does it indicate
4 how information from a visit is to be considered by the
5 Board.

6 Now, last week Mr. Cosman in his
7 submissions stated that in effect the Board by its
8 rules has explicitly stated what the law of evidence
9 would apply in any event of the Board and this is found
10 at page 24 of his submissions made on August 15th,
11 1990. This is found at Tab 4 of the material.

12 Now, with respect, we suggest that Mr.
13 Cosman's interpretation of Section 39(1) is overbroad
14 and it cannot be sustained. Section 39(1) does not
15 explicitly state anything other than the fact that the
16 Board may make a site visit or property inspection.
17 That is why the flexibility of Section 4 is still
18 relevant here, Madam Chair and Mr. Martel, because the
19 conduct of the visit, the admissibility of the evidence
20 from the visit, those are matters that are not
21 mentioned in Section 39(1) and, therefore, the Board
22 must of necessity fall back on its broad Section 4
23 powers to give the appropriate directions concerning
24 the visit and the evidence therefrom.

25 Perhaps I should have mentioned this

1 earlier, but this might be an appropriate point to make
2 this submission. What we are proposing is not exactly
3 a site visit as that term has developed and been used
4 in this hearing, it is more an inspection of real
5 property, real evidence at the request of a single
6 party.

7 Now, for lack of a better word or phrase
8 it has been referred to as a site visit, but it is
9 explicitly a part of the FFT case. It is part of the
10 evidence-in-chief of a witness who will be qualified to
11 give evidence on the issues presented during the tour,
12 and in this sense this distinguishes our proposed tour
13 from the earlier multi-party visits that have occurred
14 earlier in this proceeding.

15 On this point I must refer to and respond
16 to a statement made by Mr. Cosman last week. Again,
17 this is found at Tab 4 of his material. It's on page
18 24 and at the top of the page he indicates that site
19 visits are discretionary and then towards the bottom of
20 the page he makes a second point; and that is, that a
21 site visit is not the property of a party, it's not
22 part of the case of a party.

23 We fundamentally disagree with that point
24 of view, Madam Chair. That position might be true
25 where the Board itself initiates a site visit, but it

1 is fundamentally untrue where a party wants to present
2 real or demonstrative evidence that cannot be brought
3 into a hearing room, and that's how I would
4 characterize the subject matter of this tour, Madam
5 Chair and Mr. Martel. It is real or demonstrative
6 evidence.

7 Now, earlier in this hearing we have seen
8 pine cones, we have seen seedlings and sections of
9 trees, pieces of waferboard, even a bag of sawdust if I
10 recall correctly. That's fine because that's real
11 evidence, it is admissible, but how does one bring in
12 an entire clearcut or a plantation into this hearing
13 room and the short answer is, you can't do it, it's
14 impossible.

15 Now, you could take photographs, but
16 that's documentary evidence, that's not real evidence
17 and it is our submission that the Board must obtain a
18 firsthand look at the real evidence in the field. We
19 submit this is necessary for the Board to fully and
20 fairly adjudicate upon this case. And, indeed, because
21 of the subject matter of this undertaking, we would
22 suggest that the Board should not be confined to real
23 evidence that can be trucked into this hearing room.

24 This undertaking involves the forests of
25 Ontario and Board tours into the forest to see real

1 evidence, to hear real opinions should definitely be
2 encouraged. And once we begin to see this tour and the
3 subject matter of the tour is real evidence, it becomes
4 clear that because the tour is part of the FFT case
5 none of Mr. Cosman's positions are tenable. For
6 example, Mr. Cosman has indicated that there should be
7 no editorializing, that there should be no opinions
8 expressed by our witness.

9 Madam Chair, in our view that's
10 tantamount to FFT asking for an order that one of the
11 Industry witnesses not be permitted to express an
12 opinion on a particular subject because we might happen
13 to take a different view of the subject.

14 Mr. Cosman has frequently indicated in
15 this hearing that the hearing itself is not a garden
16 party and he is quite right; it's an adversarial,
17 quasi-judicial hearing and, as such, Mr. Cosman cannot
18 be here to ask this Board to make it somehow less
19 adversarial by prohibiting or preventing some of our
20 witnesses from presenting their opinions on matters
21 that are of key importance to this hearing.

22 Mr. Cosman has also suggested that other
23 parties be permitted to reply in the field to matters
24 raised by the FFT witness. Again, Madam Chair, if the
25 shoe was on the other foot that would be tantamount to

1 FFT asking for an order that we be allowed to call our
2 planning evidence or our planning witnesses in the
3 middle of Panel 10. That simply is untenable, Madam
4 Chair and Mr. Martel.

5 Instant rebuttal in the field during our
6 case is not proper and it's not permissible and it
7 would likely lead to very intractable difficulties in
8 the field. If the Industry or even the Ministry
9 disagrees with what is said by the FFT witness, there
10 is a place to deal with that disagreement, either in
11 cross-examination of our witness back in this hearing
12 room or in reply evidence. Those are the procedural
13 safeguards that are already in place, no further
14 safeguards are required.

15 Now, Mr. Cosman has also suggested that
16 four additional stops be made as part of the tour. I
17 have two brief comments to make about that. The first
18 is that the additional stops, in our submission,
19 represent an unwarranted and unnecessary intrusion on
20 our right to call real evidence as part of our case
21 and, again, if the shoe were on the other foot that
22 request would be tantamount to FFT asking for an order
23 that the Industry call additional evidence or witnesses
24 on certain subjects.

25 As the Board held earlier in this

1 proceeding, the Board cannot compel a party to call
2 specific evidence or lead specific evidence. The
3 calling of evidence is clearly a matter within the
4 discretionary domain of the parties subject to the test
5 of relevancy.

6 Accordingly, it was open to the Industry
7 to call precisely this kind of evidence at any time
8 during its case, but it apparently declined to do so
9 for reasons only known to the Industry and it should
10 not now be permitted to take advantage of the FFT tour
11 to squeeze in Industry evidence in the middle of our
12 evidence-in-chief. That's the first comment.

13 The second comment is, we are unclear as
14 to the probative value of these additional stops. The
15 stops themselves are outlined at Tab 5 of Mr. Cosman's
16 material -- those are our stops. Mr. Cosman's
17 suggested additional stops are at Tab 6 and just
18 looking very briefly at the first stop, he indicates
19 that a stop at Camp 93 gate will show the Board the
20 start of the FMA boundary and the dramatic increase in
21 planting on FMA lands.

22 Madam Chair, Mr. Martel, we are willing
23 to concede that more trees have been planted in this
24 area since the establishment of the FMA regime and that
25 being the case, we see no reason to stop there. I

1 mean, we are willing to concede it happens, we are
2 willing to concede there are more trees out there,
3 and without going through the other proposed stops, let
4 me simply indicate that they appear to be equally
5 unconvincing and we object to the inclusion of those
6 additional stops as part of the FFT tour as it would
7 clearly and seriously prejudice the presentation of our
8 case as we see fit.

9 MR. MARTEL: Do you suggest we go back a
10 second time?

11 MR. LINDGREN: If the Industry indicates
12 that that is absolutely necessary and desirable, that's
13 a matter for the Industry to raise. I take no position
14 on whether or not the Board should go back.

15 My position simply is, we have an
16 itinerary, we have evidence that we want to present.
17 In the Industry wanted to present its stops, it was
18 clearly open to the Industry to do it and at any other
19 time and Mr. Cosman has alluded to that in his
20 submissions earlier.

21 Now, perhaps as a matter of expediency or
22 cost/benefit analysis it might make sense to combine
23 the tour, but we object to it. We object to it in
24 principle because it's part of our case and we should
25 not be burdened with stops that are requested by other

1 parties.

2 Now, let me conclude my submissions,
3 Madam Chair, Mr. Martel, by taking Mr. Cosman's
4 suggestion to their logical extreme. In Mr. Cosman's
5 view, the world would be divided into evidence that
6 fits into this room and evidence that does not, and if
7 Mr. Cosman's argument is accepted, evidence that does
8 not fit into this room cannot be presented in the
9 normal course as part of a party's case. If that is
10 the result, the Board would quite clearly be blinkered
11 in terms of the evidence that it can and should hear in
12 this hearing.

13 Madam Chair, there is simply no authority
14 for Mr. Cosman's propositions and there is nothing to
15 prevent a party such as FFT or any other party from
16 explicitly including a site inspection as part of its
17 own case.

18 In summary our position is twofold.
19 Firstly, information obtained during the proposed tour
20 is admissible as evidence in and of itself and, in
21 addition, this Board has the statutory authority and
22 discretion to permit FFT to present this as real
23 evidence as part of our case.

24 I would conclude by simply noting that
25 the FFT witness in question has given this same guided

1 tour to over 200 scientists and foresters from the
2 world over and it would indeed be ironic and quite
3 unfortunate if this Board could not take the same tour
4 as originally proposed by FFT because of an arcane
5 legality that developed in a case almost a hundred
6 years ago.

7 As I've mentioned, Madam Chair, there is
8 no case law that prohibits FFT from presenting this as
9 evidence as part of its case and we urge the Board to
10 so find. Those are our submissions.

11 MADAM CHAIR: Thank you, Mr. Lindgren.

12 You've made it very clear that what you
13 are propoosing is very different than the site visits
14 we have undertaken in the past.

15 MR. LINDGREN: That's correct, Madam
16 Chair.

17 MADAM CHAIR: And obviously there will
18 have to be different rules attaching to this visit.
19 You are telling the Board that this is very much
20 evidence--

21 MR. LINDGREN: That's precisely our
22 position, Madam Chair.

23 MADAM CHAIR: --and that the witness
24 whose name is...?

25 MR. LINDGREN: Mr. George Marek.

1 MADAM CHAIR: Mr. Marek would in fact
2 be -- you would be leading his evidence in the field
3 when we are at these various spots?

4 MR. LINDGREN: It wouldn't be so much
5 leading his evidence, it would be allowing Mr. Marek to
6 present his own evidence with little or no prompting by
7 counsel.

8 MADAM CHAIR: But at the same time that
9 would have to somehow be recorded.

10 MR. LINDGREN: In fact, we have attempted
11 to make arrangements for the recording of that
12 evidence. We have made arrangements to have a
13 stenographer present during that portion of the case.

14 MADAM CHAIR: And that evidence would be
15 recorded as it is in the hearing room?

16 MR. LINDGREN: Yes.

17 MADAM CHAIR: And everyone's comments
18 would be put on the transcript?

19 MR. LINDGREN: Whatever is said would be
20 on the transcript. But the point is, we object again
21 in principle to any suggestion that the other parties
22 on the tour can cross-examine -- or can respond
23 factually to what is said by Mr. Marek or can point out
24 other items not specifically identified or discussed by
25 Mr. Marek.

1 Again, if the other parties feel that is
2 necessary, the time to do it is in this hearing room
3 during reply or during cross-examination.

4 MADAM CHAIR: So you are suggesting that
5 Mr. Marek's evidence in the field would not be subject
6 to cross-examination then?

7 MR. LINDGREN: Not in the field.

8 MADAM CHAIR: He would come back and in
9 the panel that he appears in he would be cross-examined
10 on what he had said at the site visit at that time?

11 MR. LINDGREN: If the parties feel that's
12 necessary, that's correct. What he is saying in the
13 field is part of his evidence-in-chief.

14 MR. MARTEL: How long will that visit
15 take, Mr. Lindgren?

16 MR. LINDGREN: The itinerary that --

17 MR. MARTEL: I saw the itinerary but I
18 just...

19 MR. LINDGREN: I think it's pretty well a
20 full day's endeavour.

21 MR. HUFF: It will be a very full day.

22 MR. FREIDIN: The letter says eight to
23 four.

24 MR. LINDGREN: I mean, that is assuming
25 everything goes according to schedule.

1 MADAM CHAIR: Thank you, Mr. Lindgren.

2 MR. LINDGREN: Thank you.

3 MADAM CHAIR: Mr. Freidin?

4 MR. FREIDIN: I think probably it would
5 be appropriate that Mr. Cosman reply to all the
6 submissions.

7 Madam Chair, Mr. Cosman indicated that it
8 was the Industry's view that the Board should reserve
9 the right to see what it wanted to see just as it did
10 in the past visits and that the same opportunity should
11 be provided to all parties in relation to this one.

12 I submit on behalf of the Ministry of
13 Natural Resources that Mr. Lindgren is correct when he
14 indicates that the site visit being proposed by FFT is
15 different than the site visits that the Board went on,
16 the Board site visits which were facilitated by MNR.

17 I agree with Mr. Lindgren's submissions
18 that the site visit that is being proposed is properly
19 characterized as demonstrative evidence. Because of
20 the different rules which are going to apply,
21 specifically the recording of the words of the witness
22 and the right for all parties to cross-examine the
23 witness on what is said, make it clear that it is a
24 different sort of visit than the Board has taken
25 earlier.

1 This being the case, Madam Chair, I agree
2 that -- I would submit that a general proposition which
3 the Board should accept and keep in mind in making its
4 final decision on this matter is that a party should be
5 entitled to put in its case in the manner that it sees
6 fit and should not be prejudiced in that regard by any
7 means.

8 The issue then really becomes, in my
9 submission, whether or not the additional site visits
10 or the additional sites that the Industry wants the
11 Board to see should be fit into the site visit proposed
12 by FFT and the simple test for the Board to apply, in
13 my respectful submission, as to whether that should
14 occur is whether FFT's right to present its evidence in
15 the way it sees fit would be prejudiced by inserting at
16 various places or at the end or the beginning of their
17 evidence the proposed stops by Industry.

18 Mr. Lindgren has made the submission that
19 in the view of FFT that they would be prejudiced. I am
20 not going to make any submissions as to whether that is
21 the case or not. I think that is a matter for debate
22 as between Mr. Lindgren and the Industry.

23 But simply put, if the Board finds that
24 it would prejudice or accepts the view of FFT that
25 these site visits would prejudice their ability to put

1 in their case in the way they wish, then it would be my
2 submission that the Board should not accede to the
3 request by Industry to add the particular sites they
4 wish to see.

5 If the Board of is of view there would be
6 no prejudice, then the Ministry has no objection to the
7 Board visiting those particular sites if, in the
8 Board's view, it believes that it would be useful or
9 they are interested in seeing the sites of the
10 description referred to in the Industry's list.

11 So I think that's the Ministry's
12 submission in a nutshell, Madam Chair. This is a
13 different kind of site visit, it is demonstrative
14 evidence, FFT should not be prejudiced in their ability
15 to do this in the matter they see fit and, therefore,
16 the additional sites suggested by Industry should only
17 be acceded to by the Board if the Board is satisfied
18 that there will be no prejudice to FFT in the
19 presentation of their evidence.

20 MADAM CHAIR: Thank you, Mr. Freidin.

21 MR. CAMPBELL: Perhaps it would be best
22 if I went next given the nature of my submissions.

23 MADAM CHAIR: Mr. Campbell.

24 MR. CAMPBELL: Madam Chair, we agree
25 entirely with your comment that this is a different

1 kind of visit that is being proposed. We also agree
2 entirely with the submissions made by the Ministry of
3 Natural Resources in response to Mr. Lindgren's
4 submissions. I won't attempt to recanvass the issues
5 that he has spoken to in detail.

6 On one matter we would perhaps go
7 slightly farther than the Ministry of Natural Resources
8 in making our submissions on this matter and that is
9 with respect to the matter of prejudice. It would be
10 our submission that if FFT asserts in good faith, as I
11 believe it has done, that it would prejudice its
12 evidence-in-chief to make the additional stops, to
13 insert, in effect, into their evidence-in-chief the
14 additional stops proposed by the Industry, then the
15 fact that FFT -- the mere fact, not the mere fact, the
16 simple fact that FFT asserts in good faith that
17 prejudice should be given great weight by the Board in
18 its deliberations and in it places a very heavy onus,
19 in our submission, on counsel for the Industry to
20 overcome that assertion of prejudice.

21 Having said of that, as I say, we do
22 support entirely the view, the general thrust of the
23 remarks made that this is a very different kind of
24 proposal from normal site visits and it is
25 evidence-in-chief which FFT is entirely entitled to

1 call.

2 MADAM CHAIR: Mr. Cosman?

3 MR. COSMAN: Thank you, Madam Chair.

4 Madam Chair, the arguments of my friend
5 are divided in two parts. The first part is addressed
6 to whether a site visit or taking a view is part of the
7 evidence; and the second question, and it's a separate
8 question, is even if it is, whether the Board can
9 control it or should the Board see and hear only what
10 the party requesting the site visit wants the Board to
11 see and hear. There are two questions and I am going
12 to address them separately.

13 I must state those two questions again.
14 First of all, whether taking a view is part of the
15 evidence; and, secondly even if it is, whether the
16 Board can control it or should the Board see and hear
17 only what the party requesting the visit wants it to
18 hear.

19 The first point. With respect to my
20 friend's suggestion that I didn't turn the page, Madam
21 Chair, indeed I did. In fact, Mr. Sopinka was a
22 partner in the firm when the articling students were
23 writing this book and we helped to put this book
24 together, but I can tell you that with respect to the
25 second page that the second page expresses what an

1 author is entitled to do and that is, suggest a
2 direction as to where he think or she thinks the law
3 ought to go.

4 What Mr. Sopinka does on the first
5 page -- my friend keeps harking back to a 1901 English
6 case. That case has been adopted in Ontario by the
7 Ontario Court of Appeal. When the Ontario Court of
8 Appeal speaks in Ontario, that is the law of Ontario
9 until such time as the Supreme Court of Canada says
10 otherwise, and the fact that Newfoundland or Alberta or
11 the House of Lords says something else doesn't change
12 what the law of Ontario is.

13 In my respectful view, I have a duty as
14 counsel to bring before you the law on something as
15 important as this. That's my obligation to you as a
16 tribunal, as well as an advocate on behalf of my client
17 and the law of Ontario, I submit, is as stated in the
18 case that I referred to, Chambers and Murphy which is a
19 1953 case of the Ontario Court of Appeal. A judgment
20 where Mr. Justice Laidlaw was speaking for the court,
21 but let me tell you that that case has been followed in
22 Ontario.

23 My friend made a number of arguments
24 referring to the English criminal case and the
25 Newfoundland case. In 1985 the Ontario Divisional

1 Court in the case Swadron against North York, which I
2 don't have the copy to file with you, but I will -- we
3 do have a copy to file with you. Thank you, Mr.
4 Cassidy.

5 With respect to Swadron and North York --
6 I am addressing the issue, solely the legal issue, the
7 narrow legal issue as to what the character of this is
8 that you would see. If you turn over to the second
9 page of this case, page 205, starting at paragraph 3
10 you will see:

11 "It is my conclusion..." This is the
12 Divisional Court speaking, Mr. Justice White, he says:

13 "It is my conclusion from reading the
14 comments of Her Honour at page 4,
15 discussing the view, that she actually
16 visually assessed the defects in the
17 sidewalk. In other words she was using
18 her own detailed observations of the
19 defects in the sidewalk as evidence upon
20 which she based her findings of fact.
21 That is an improper use of a view. The
22 classical statement of law as to the use
23 of a view is that it is to enable the
24 court to better understand the evidence.
25 The law dealing with this matter is dealt

1 with in Chambers v. Murphy where Mr.
2 Justice Laidlaw gives the rule of law and
3 as I read that case, it indicates that if
4 the learned trial judge uses the view to
5 acquire evidence on which he bases his
6 judgment, it is an improper use of a
7 view. To the same effect is the decision
8 of the Divisional Court..." another 1983
9 court which is referred to where Mr. Justice O'Leary
10 speaks, and I quote:

11 "It is obvious from those words of the
12 trial judge that he did not restrict the
13 use of his view to a better understanding
14 of the evidence given at the trial but
15 rather, used his observations as
16 evidence. In my view, for these
17 reasons, a new trial should be ordered."

18 Over on the top of the page, 206, if you
19 would just turn over the page, you will see about 12
20 lines down starting in the middle, the Divisional Court
21 says:

22 "I accept the majority view of the
23 Divisional Court as the law, and the
24 statement of the Court of Appeal, as
25 enunciated by Laidlaw, J.A., in Chambers

1 v. Murphy as the law."

2 The point is, notwithstanding what my
3 friend says, notwithstanding the wish of an author,
4 Chambers and Murphy is the law in Ontario today.

5 Secondly, I also cite -- I refer to an
6 1986 case, Sabino against Bob General Contracting Ltd.
7 and that's District Court Judge Mandel, and at page
8 190 - I think you have a copy, Mr. Cassidy has put a
9 copy before you - you will see VIEW starting in the
10 middle of page 190:

11 "The plaintiff at the end of his case
12 requested that I view the premises. The
13 defendant objected to my taking a view.
14 The law in Ontario as to a view is stated
15 in Chambers v. Murphy...Ontario Court of
16 Appeal. There the Court stated that a
17 view is for the purpose of the Court
18 following and applying the evidence.
19 I informed counsel that I would reserve
20 on the matter of a view and give my
21 decision after all the evidence was in.
22 The evidence as it unfolded indicated
23 that part of the lis between the parties
24 is not what one sees by looking at the
25 walls...and floors, but what is behind

1 the walls and how the defects can be
2 rectified. Even the experts of the
3 defendant...testified as to the work done
4 by the defendant being not acceptable in
5 some respects."

6 Having regard to that, the court
7 decided -- they declined to view the premises.

8 The only point of this, Madam Chair, is
9 to point out that notwithstanding what my friend says
10 as to what the law in Ontario is in citing the
11 Newfoundland and English cases or the wishes of now the
12 Supreme Court Judge, Sopinka, Chambers and Murphy does
13 represent Ontario law.

14 Secondly, with respect to my friend's
15 submission that he is asking for something different,
16 there is no question about that. He is saying, what I
17 want you to do is to come out into the field, my
18 witness - and as we feared it's Mr. Marek who is going
19 to be the author of not only as an expert for Forests
20 for Tomorrow, but is the author of the separate
21 statement for the Beardsmore Society that we have heard
22 about, and we are very concerned as to the impartiality
23 of his evidence - is going to testify in the field in a
24 position where he is saying: Look at that there,
25 whereas if you looked a few feet further you might see

1 something else if it was pointed out to you, and it is
2 going to be very difficult back in the hearing room to
3 try to put in that in context; look at the way those
4 trees are stunted or whatever, whereas there may be
5 trees around it which may put it in a different context
6 with the FMA forester from Domtar right there to answer
7 the Board's questions.

8 So that takes me to the second issue and
9 that is, whether the Board controls what it ought to
10 see and hear in the field or whether the party has the
11 right to direct the Board in that regard.

12 By the way, before I leave it and just
13 before I just address that specifically, having regard
14 to the Statutory Powers Procedure Act, there is Section
15 20 which does indicate that evidence must be --
16 evidence at the hearing must be recorded.

17 Section 20(a), you have that in front of
18 you. Section 20(a):

19 "A tribunal shall compile a record of
20 any proceeding in which a hearing has
21 been held which shall include..."
22 various documents and notice, et cetera, and (e),

23 "The transcript, if any, of the oral
24 evidence given at the hearing."

25 So, Madam Chair, you are quite right. If

1 any evidence is going to be heard in the field, no
2 matter what the rules are that govern it, that must, as
3 a matter of law, be transcribed by reason of Section
4 20(e) of the Statutory Powers Procedure Act and that
5 particular section also deals with the kinds of
6 evidence, the documentary evidence and other evidence
7 that is filed at a hearing which would include
8 demonstrative evidence that would be part of the
9 proceedings itself. But anyway, I just point that out
10 to you before I go to the second issue.

11 Now, my friend Mr. Lindgren also
12 indicated that a number -- there have been a number of
13 changes in the law. This is what he called his
14 statutory discretion argument by reason of the
15 Statutory Powers Procedure Act and he cited Section
16 10(b) that says a party can call evidence.

17 "A party to proceedings may at a
18 hearing call and examine witnesses and
19 present his arguments and submissions."
20 He argues that that gives him the right
21 to call and examine witnesses in the field. That has
22 to be his argument with respect to a site visit.

23 My submission there is that, yes, the
24 parties have a right at a hearing to call evidence and
25 to put before you such evidence as they want. That is

1 very clearly the right of a party.

2 However, when parties ask a tribunal such
3 as this one to step outside of the hearing room, then a
4 different set of rules kick in and those are the rules
5 that the Board itself recognizes on taking a view and
6 there Board itself says the Board may conduct a site
7 inspection. If my friend was right, there would be no
8 discretion in the Board to conduct a site inspection,
9 it would have to. The Board would have to go where a
10 party said I want you to go.

11 My friend also cited -- and my submission
12 is that it is the discretion of the Board to conduct a
13 site inspection, that is the position at common law
14 with respect to taking a view, it is also the position
15 of the Board as stated in its own words and how it does
16 it is subject to the Board's own discretion as well.
17 And because the Board exercises its discretion to
18 determine the rules on how a view is to be taken that
19 is not, in my respectful submission, an interference
20 with a party's case.

21 The second point under that statute that
22 Mr. Lindgren referred to is Section 15(1) which is the
23 section that governs the admissibility of evidence.
24 That's the section that says the Board may admit any
25 document, any thing.

1 Well, we are not talking here, with great
2 respect to my friend, of admitting any document into
3 evidence or admitting any thing, be it a bag of
4 sawdust, a sample of wood or in some of the Indian
5 cases a canoe. Those have all been admitted by
6 tribunals and courts as evidence. That is clearly the
7 case. What we are talking about here is a request to
8 the tribunal to go into the field and see things. We
9 are not talking about admitting things into evidence.

10 My friend referred to Section 4 of the
11 Statutory Powers Procedure Act -- of your rules,
12 rather, which deals with the flexibility of the Board
13 in its proceeding and that rule says as follows:

14 "Where any matter arises during the
15 course of any proceeding that is not
16 contemplated by these rules..." and site
17 visits are clearly contemplated and are expressly the
18 subject of a rule, Madam Chair,

19 "...then the Board may do whatever is
20 necessary no enable it to effectively and
21 completely adjudicate on the matter
22 before it."

23 So all this particular section and Rule 5
24 says is that the Board itself has a flexibility in
25 dealing with its own rules and merely because it has

1 that flexibility doesn't mean it can over-ride what
2 either the law of evidence is or what, I submit, is a
3 matter of fairness to the parties when conducting a
4 site visit.

5 As I said at the outset, we do not oppose
6 and we support this site visit by my friend. We are
7 concerned about the straightjacket that I suggest my
8 friend is trying to put on the Board in the way it
9 wants the Board to see the evidence or see the things
10 in the field that Mr. Marek will be pointing out to
11 you.

12 Now, in my view, in law a site visit
13 where you go out and take a view is a different thing
14 from demonstrative evidence. For example, one may
15 admit into evidence a photograph of a clearcut, and
16 that has been done, but if one wants to go out and ask
17 the tribunal to go to the field to take a view of a
18 clearcut, again, that is subject to the law with
19 respect to taking a view or site inspections.

20 Now, my alternative position is, as I
21 stated at the outset, that our case is not closed, we
22 have not completed our evidence and I am asking this
23 tribunal to see those things that are in the list filed
24 in the exhibit that are on the Domtar limit.

25 I think it's wholly ridiculous that I

1 would have to ask the Board to make a separate trip
2 and, in fact, when someone asks -- as a matter of
3 principle, when someone asks the Board to take a view
4 or go out to the field to conduct a site inspection of
5 something, as I said last time, it would be ridiculous
6 if four different parties who wanted the Board to see
7 four different aspects of the same thing and point them
8 out to the Board would have to take the Board back four
9 times to see those things.

10 My friend says in response to a question
11 from Mr. Martel, that's up to them as to how they
12 conduct their case, but we want to conduct our case in
13 a certain way.

14 I think, Madam Chair, there is a
15 practical limit on how site visits may be conducted and
16 this is why tribunals and courts have developed the
17 kind of rules they have in terms of taking a view. In
18 my respectful view, it would be entirely appropriate in
19 the Board's control of its own discretion in how it
20 wants to conduct a site inspection to hear what the
21 parties, other parties, as well as the one party that
22 wants you to conduct the site inspection, would like
23 you to see and permit those parties in the context of
24 that site visit to answer questions if you should have
25 a question or to point out something if that has been

1 determined in advance, as you have done in the past
2 with respect to site visits.

3 I have no problem with my friend wanting
4 you to see and hear from Mr. Marek on the Domtar limit.
5 What I do want is to ensure that what you see and hear
6 is fair and put in a context that is not one sided and
7 that we don't find ourselves back in the hearing room,
8 having had a bandage across our representative's mouth
9 on the trip so that when -- and trying to cross-examine
10 or deal with it is very difficult when it might have
11 just been a question of you lifting your eyes from what
12 Mr. Marek is pointing to to look at something else.

13 So, in my respectful submission, No. 1, I
14 point out to you what I say the law is with respect to
15 taking a view; and, secondly, no matter what the law
16 is, whether it is evidence or whether it helps you
17 appreciate the evidence, you still clearly have a
18 discretion to control how that site visit should be
19 conducted and to permit parties other than the one
20 party requesting the visit to point out things that are
21 relevant on that specific site location.

22 Those are my submissions.

23 MADAM CHAIR: Thank you, Mr. Cosman.

24 Mr. Lindgren?

25 MR. LINDGREN: Madam Chair, if I could, I

1 could respond very quickly to the submissions made by
2 my friend.

3 MR. COSMAN: Are we going to get into a
4 reply to reply. Subject to what I may have to add -- I
5 mean, there are rules again that govern Board
6 submissions.

7 I have made my submissions, my friend has
8 and I have replied. That is the Board way of
9 conducting motions. We don't play ping pong back and
10 forth. I would suggest that my friend has had his
11 opportunity to make his submissions.

12 MR. LINDGREN: Well, Madam Chair, I
13 recall some time ago when we had a discussion about the
14 Pearce report, my friend was quite adamant that a
15 Notice of Motion was required, we just can't talk about
16 these things and now I note that we have in fact
17 discussed this procedural matter without the benefit of
18 the Notice of Motion and I would suggest it is entirely
19 appropriate for further submissions to be made if
20 indeed the Board feels that's necessary.

21 ---Discussion off the record

22 MADAM CHAIR: The Board feels that it
23 understands your position clearly, Mr. Lindgren. We
24 have heard enough with respect to those submissions,
25 but we do have a few questions.

1 MR. LINDGREN: Of myself or Mr. Cosman?

2 MADAM CHAIR: Of you.

3 MR. LINDGREN: Certainly.

4 MADAM CHAIR: In what way will the Board
5 viewing other sites in addition to those proposed by
6 your party prejudice the presentation of your evidence?

7 MR. LINDGREN: I can think of several
8 aspects of prejudice that might come to bear in this
9 case.

10 First of all, let me remind the Board
11 that our position was that other parties should not be
12 permitted to reply to or respond to statements made by
13 Mr. Marek in the field, and I would suggest as a direct
14 corollary to that other parties should not be allowed
15 to present their own witnesses or their own evidence
16 during this site visit and the reason for that is
17 prejudice.

18 MR. MARTEL: Can we stop right there
19 then.

20 MR. LINDGREN: Certainly.

21 MR. MARTEL: So just so we are clear. I
22 can understand your concern about someone contradicting
23 Marek at the time that he is making his statements or
24 pointing something out to us, I can understand your
25 reluctance to have any of that sort of discussion go

1 on.

2 However, I am having difficulty while I
3 am there, if somebody were just to say that is the site
4 we want you to see, as we did when MNR prepared it and
5 we had people with us, straight factual material, not
6 commentary, not ad-libbing, not adding, not questioning
7 what Marek says, if someone from the Industry simply
8 said to us: If you look over to the right there is
9 enough edge -- we want you to look at the edge that's
10 there created by this clearcut, and I was wrong when I
11 started to editorialize myself there for a moment,
12 there is enough edge.

13 I can understand what your concern is,
14 but to say there is enough -- or there is edge there
15 created by the way the clearcut was done, would that
16 prejudice? I mean, if we were very tight on the fact
17 that they would just show us what they wanted us to see
18 without any comment the way we had done to us when we
19 did these various other site visits, that there was no
20 commentary at all.

21 MR. LINDGREN: Mr. Martel, I think the
22 problem is that it's a very slippery slope and what
23 might be factual to one person is in fact
24 editorializing to someone else, and I think perhaps
25 your inadvertent slip is perhaps an indication that can

1 and will probably occur.

2 Qualitatively and perhaps conceptually
3 there is no difference, at least in our view, between
4 allowing a witness to rebutt or reply to something that
5 Mr. Marek says at that particular instance or allowing
6 that person an opportunity later in the afternoon to
7 present his own visit, his own items in the field that
8 he wants the Board to see.

9 MR. MARTEL: All right. Let's stop
10 there, then. Would you object to us going if we had to
11 do it a second trip around?

12 MR. LINDGREN: Would I object to it?

13 MR. MARTEL: Totally divorced from what
14 Mr. Marek will say and present, if the Board while it
15 was in that neck of the woods, because it is not the
16 easiest place to get into, if we are going to fly to
17 Thunder Bay or we are going to drive to Geraldton and
18 so on.

19 I guess the difficulty - I don't speak
20 for my colleague - but the difficulty for me is to do
21 it a second time, a week later, the next day, whenever.

22 It is the same as when we are going to
23 Timmins, we have asked that we see things there that
24 would make no sense in going back to see a second time
25 on a second trip.

1 MR. LINDGREN: The Board certainly has
2 the discretion and the authority to exercise its own
3 initiative and to see what it wants to see, but we
4 object to a suggestion by one of the other parties that
5 they can parachute in substantial portions of evidence
6 into our own case and that's how we characterize the
7 Industry proposal.

8 Then returning to Madam Chair's original
9 questions which had to do with prejudice. As a
10 practical matter, I can see prejudice occurring simply
11 as a matter of time or lack of time. Mr. Cosman or Mr.
12 Cassidy has estimated that perhaps there stops might
13 take an additional 45 minutes. I have no way of
14 corroborating that, and even assuming that it does
15 stick to the schedule and assuming that it does make 45
16 minutes, it is clear that that the additional spots may
17 contribute to a foreshortening of our ability to be in
18 the field. I mean, everybody has schedules they have
19 to adhere to. I think it's fair to say that prejudice
20 may occur simply as a result of timing.

21 The other aspect of prejudice that I
22 think would be necessary to bring to your attention is
23 the content of what Mr. Marek would have to say. If
24 Mr. Marek is presenting his evidence and then at some
25 point later an Industry representative is pointing out

1 something, I mean there is going to be obviously some
2 to-ing and fro-ing and then what Mr. Marek shows later
3 may in fact relate to or respond to what the Industry
4 has presented. That's why I call it a slippery slope
5 and it's one that can be simply avoided by not acceding
6 to the Industry proposal.

7 Now, as Mr. Campbell has indicated
8 earlier, we have made this allegation of prejudice in
9 good faith and I think there is substantial support for
10 that allegation of prejudice, and I agree with Mr.
11 Campbell that there does appear to be in these
12 circumstance an onus, a very heavy onus on the Industry
13 to overcome that, I guess, presumption of prejudice, as
14 it were. I would suggest that that onus has not been
15 satisfied.

16 MR. COSMAN: Madam Chair, also just in
17 response to Mr. Martel's question. In respect to the
18 assertions of prejudice. He who asserts prejudice has
19 to demonstrate it. That's the basic principle that
20 governs in a matter, and Madam Chair is quite right to
21 ask counsel: Well, what is the prejudice going to be
22 because merely by saying I am going to be prejudice
23 doesn't bind or control a tribunal or a court. You
24 have to express what the prejudice is going to be or
25 else it doesn't make sense. Any party can assert

1 prejudice, it is what is the prejudice.

2 So with respect to the elements of
3 prejudice that my friend said, the time. Mr. Cassidy
4 didn't pick 40 minutes out of the air, he did the
5 route. That 40 minutes is from his actual trip on the
6 ground.

7 Secondly, my friend points out the second
8 aspect of prejudice, he calls it the slippery slope, is
9 that someone might point out something that might
10 contradict what Mr. Marek might show later on.

11 Well, that is my very point, Madam Chair,
12 Mr. Martel. You are not there to see only what one
13 party wants to see. To put it in context and to have
14 it in balance is appropriate so that when one goes on a
15 site visit that is exactly why more than one party is
16 allowed to control what the Board must either see or
17 hear; and, thirdly -- I think I have covered it. Thank
18 you.

19 MADAM CHAIR: That's fine. One question
20 for you, Mr. Cosman.

21 MR. COSMAN: Yes.

22 MADAM CHAIR: The Board has discussed in
23 the past the possibility of a limited right of reply
24 for your clients in the event that you need to respond
25 to some evidence that has to do directly with their

1 interests. For example, in this situation with Domtar,
2 if we are inspecting their operations, certainly that's
3 another alternative you have at your disposal if you
4 feel that it is unfinished business with respect to the
5 Board hearing evidence in the field.

6 MR. COSMAN: You are quite right to point
7 that out and I would have to if my friend pointed out
8 something or said something through his witness that we
9 had to reply to.

10 Once our case is finished, of course, we
11 would have no right of reply except in that limited
12 respect that you have indicated and as the Board has
13 otherwise indicated on the record, and that's one way
14 of doing it, but the problem is, on a site visit itself
15 it may be important to point something out then and
16 there. That's the difficulty.

17 So the right of reply, I can deal with
18 that in the hearing room quite nicely, but if it is a
19 matter, as Mr. Martel says, of raising your eyes and
20 looking to the edge of the clearcut, the only way I
21 could properly deal with that in reply would be by
22 bringing you back which would be ridiculous.

23 MADAM CHAIR: Well, ridiculous but
24 possible.

25 MR. COSMAN: Ridiculous but possible,

1 that is right. I don't know what other site visits
2 apart from this one that I am now requesting and
3 Forests for Tomorrow has requested are going to be
4 requested in the hearing, and if the parties --

5 MADAM CHAIR: There may be many more.

6 MR. COSMAN: There may be lots of them.

7 MADAM CHAIR: Yes.

8 MR. COSMAN: But having to go back more
9 than once I think is unfair to you, Madam Chair, and
10 the Board, but that is true.

11 MADAM CHAIR: Thank you, Mr. Cosman.

12 ---Discussion off the record

13 MADAM CHAIR: Thank you very much for
14 your submissions.

15 The Board is going to take its morning
16 break now. We are finished with this discussion and we
17 will issue a soon, very soon.

18 We will return in 20 minutes. Thank you.

19 ---Recess taken at 10:25 a.m.

20 ---On resuming at 10:50 a.m.

21 DALE MUNRO,
22 WAYNE DOUGLAS YOUNG,
23 RICHARD FRY,
 LEN SUOMU,
 MICHAEL DEAN INNES, Resumed

24 MADAM CHAIR: Please be seated.

25 Mr. Freidin?

1 MR. FREIDIN: I think before we start, I
2 think Mr. Munro has a correction that he wanted to make
3 to one of the exhibits from yesterday.

4 MR. MUNRO: Yes. It is the portion of
5 MNR actual cost estimates. I'm not sure what the
6 exhibit number was.

7 MR. COSMAN: 1285.

8 MR. MUNRO: Mr. Freidin has pointed out
9 that there is a mathematical error in the elimination
10 of the second year's survival surveys. The number
11 should be 375,000 not 455,000.

12 MADAM CHAIR: The number again, Mr.
13 Munro.

14 MR. MUNRO: 375,000.

15 MR. FREIDIN: Two matters, Madam Chair,
16 before I commence my questioning. It was last week
17 that Mr. Martel indicated some -- or asked how this
18 reduction in documentation could occur, maybe it was
19 yourself, from 700 to two, three or four documents and
20 I undertook to determine whether we could deal with
21 that matter through cross-examination as opposed to
22 through reply evidence.

23 We have made attempts to do that. In my
24 submission, it is not possible to do it through
25 cross-examination in a way which would probably --

1 which would not add confusion as opposed to helping,
2 and we also felt it would be unfair to the witnesses to
3 put to them considerable documentation which he think
4 would be necessary to really explain the point and ask
5 them to deal with it without any time to review.

6 So I apologize for not being able to deal
7 with the matter that is of interest to the Board now.
8 I am just asking you to keep in mind the
9 cross-examination where the Ministry through its
10 cross-examination suggested that that reduction could
11 take place and as a result of that, we have an
12 obligation to and we will, therefore, deliver on the
13 obligation to call reply evidence to demonstrate how
14 that can happen.

15 Secondly, yesterday we had some confusion
16 regarding page numbers with Exhibit 1028. I spoke to
17 Mr. Paul and it appears that the problem arises because
18 the Board and the other parties for some reason do not
19 have a copy of the entire original Exhibit 1028. Also,
20 for some reason the original Exhibit 1028 is missing
21 from the Board's files.

22 So what I would like to do today -- I am
23 not going to ask any questions about that. I've
24 reconsidered the need to do that, but I would like to
25 provide the Board and the other parties with the

1 balance of Exhibit 1028 so you have the full document
2 if that exhibit should come up again.

3 I was advised by Mr. Paul that what you
4 have, Madam Chair, Mr. Martel is that portion of the
5 document that deals with supplementary documentation
6 for operations in areas of concern. That's the first
7 page of the document that you have in front of you,
8 Madam Chair. It looks like that Madam Chair, Exhibit
9 1028. (indicating)

10 MADAM CHAIR: It's here somewhere, Mr.
11 Freidin.

12 MR. FREIDIN: All right. I think the
13 witnesses have their copy as well.

14 MADAM CHAIR: Who is Mr. Paul?

15 MR. FREIDIN: Sorry, Dan...

16 MADAM CHAIR: Mr. Pascoe.

17 MR. FREIDIN: I am terrible on names,
18 almost as bad as I am on numbers. I believe Mr. Paul
19 is the person who took the original.

20 MADAM CHAIR: We've got it, Mr. Freidin.

21 MR. FREIDIN: Okay. The original had
22 before the document that you have a letter from me
23 dated December the 21st, 1989 which I will give to you,
24 and following the document that you have there was a
25 document that looks like this, it says Supplementary

1 Documentation Primary, Secondary Road Corridors. It is
2 a form that looks similar to the one that you have but
3 this one deals with road corridors and is followed by
4 general and specific instructions in relation to road
5 corridors, just as the documet that you have in front
6 of you deals with general and specific instructions in
7 relation to operations in areas of concern.

8 So if I might provide the Board with the
9 letter and the documentation in relation to roads. I
10 can provide that to the -- well, I will just hand them
11 to Mr. Cosman.

12 Does anyone have questions on these
13 documents?

14 Mr. Campbell?

15 MR. CAMPBELL: (Nodding negatively)

16 MR. FREIDIN: Perhaps the best thing to
17 do is I will just circulate these to the parties at the
18 next break.

19 MR. CAMPBELL: Madam Chair, just while we
20 are dealing with all of these exhibits, perhaps Mr.
21 Freidin could just check, our copy of this
22 documentation has Mr. Freidin's letter dated December
23 21st, 1989 on the front of it. It is marked as
24 exhibit -- this is just our record keeping and the
25 problem may be there, but it has marked on the front of

1 it Exhibit 1027 and then there was 1028 and 1029.

2 I am concerned that we may be adding to
3 1028 something that is already 1027 and 1029.

4 MR. FREIDIN: There's the problem.

5 MR. MARTEL: I thought this was a
6 separate document as well.

7 MR. FREIDIN: If that's the case then, I
8 apologize. Those were the three documents that Mr.
9 Bisschop introduced which was the entire response to
10 the issue which arose in Panel 15.

11 So I apologize, Madam Chair, to the
12 Board, I apologize to the witnesses for the confusion
13 which was caused. If you look at it as a package you
14 will see basically the basis on which I was
15 cross-examining in relation to those matters.

16 MADAM CHAIR: For the record then, Mr.
17 Freidin, the letter of December 21st from you
18 concerning the AOC documentation remains Exhibit 1027.

19 MR. FREIDIN: Yes. I am not suggesting
20 that any of the exhibit numbers be changed or any of
21 the documents that I put in be added to Exhibit 1028 if
22 in fact they have already been marked as something
23 else. There was a foul up in communication between the
24 Thunder Bay office. Okay.

25 MADAM CHAIR: Are you finished, Mr.

1 Freidin?

2 MR. FREIDIN: No, I have some questions
3 now which is much more enjoyable than shuffling paper.

4 MR. COSMAN: Or answering questions.

5 CONTINUED CROSS-EXAMINATION BY MR. FREIDIN:

6 Q. Mr. Munro, during your evidence the
7 other day when I was talking to you about AOC
8 documentation, the amount that is produced under the
9 Ministry process as opposed to the proposed Industry
10 process, you made reference to an area of concern in
11 relation to a heronry which I think you indicated was
12 looked at and for which supplementary documentation was
13 prepared in accordance with the Ministry's process.

14 MR. MUNRO: A. That's my understanding.

15 Q. And is this the supplementary
16 documentation and a letter in relation to it that you
17 referred to in that evidence?

18 A. Yes, this is identical to what I
19 provided you with yesterday.

20 MR. FREIDIN: Madam Chair, I would like
21 to mark as the next exhibit, a letter -- well, let's do
22 it this way, supplementary documentation form for
23 operations in areas of concern, AOC No. 16, found on
24 township or base map 506934. Perhaps that should be A
25 and then B is a letter of August the 1st, 1990 from Mr.

1 J.T. Taylor district manager of Red Lake District to a
2 Mr. Dave Baird of Boise Cascade Canada Limited.

3 MADAM CHAIR: Yes, thank you, Mr.
4 Freidin. This is how many pages?

5 MR. FREIDIN: The letter is two pages,
6 the area of concern form is...

7 MR. MUNRO: Seven.

8 MR. FREIDIN: Seven.

9 MR. MUNRO: And there is not a map
10 included because you can't fax a map.

11 MADAM CHAIR: Thank you. That will be
12 Exhibit 1286, the documentation form is A and the
13 letter Exhibit 1286B.

14 MR. FREIDIN: Is there anybody here who
15 doesn't have a copy or needs one?

16 MR. COSMAN: I have a copy.

17 MR. FREIDIN: All right.

18 ---EXHIBIT NO. 1286A: Supplementary documentation form
19 for operations in areas of
20 concern, AOC No. 16, found on
base map 506934.

21 ---EXHIBIT NO. 1286B: Letter of August the 1st, 1990
22 from Mr. J.T. Taylor, District
23 Manager of Red Lake District,
to Mr. Dave Baird of Boise
Cascade Canada Limited.

24 MR. FREIDIN: Q. Mr. Munro, could you
25 advise the Board what point you were trying to make

1 during your evidence when you referred to this
2 particular area of concern and the documentation in
3 relation to it?

4 MR. MUNRO: A. The point was that
5 documentation of areas of concern and the planned
6 activities is being planned in accordance to Exhibit
7 1028 or it might be 1027, whichever it is, is that this
8 document is being utilized in the field to actually go
9 out and plan activities.

10 In this particular case, MNR did the
11 documentation, usually it is the company that does the
12 documentation, and the point that I was trying to make
13 was, Mr. Fry has indicated that heronry rookeries on
14 his FRI map is where we were showing that there is a
15 no-cut reserve, that there is a heavy development of
16 buffer zone, and he has actually detailed out what the
17 prescriptions are on the map which is much similar to
18 what is being done in the field with the application of
19 1028.

20 And I mentioned that if we applied 1028,
21 as Mr. Bisschop filed it before the Board, it would
22 take approximately eight pages of documentation to meet
23 the requirements. There is, in fact, seven pages that
24 has been filed before you, but, as I said, it doesn't
25 include a map. I had some difficulty trying to fax the

1 map at Mr. Freidin's request.

2 It is just an example of what the
3 supplementary documentation would be under Exhibit
4 1028.

5 Q. Mr. Munro, would you go to the map,
6 please, Exhibit 1076, I believe.

7 A. Sure.

8 Q. And on your map, would you confirm
9 for me that the heron colony, rookery, I'm not sure,
10 has a no-cut reserve indicated around it in red of 300
11 metres?

12 A. That's correct, yes.

13 Q. And it has around it in the cross
14 hatched a no disturbance between a time period, I
15 think, April the 1st and August the 31st?

16 A. Actually, Mr. Freidin, it says no
17 heavy development within 1,000 meters of the nest
18 between April 15th and August 1st.

19 Q. All right. And after that time
20 period you can have heavy development within that area
21 but not within the 300 metres?

22 A. That's correct. That's our
23 understanding and interpretation of the existing
24 heronry rookery guidelines.

25 Q. That's fine. You may sit down. Now,

1 I suggest to you, Mr. Munro, that if you look at this
2 particular area of concern, area of concern No. 16,
3 which is Exhibit 1086A, that it differs substantially
4 from that prescription which is shown on the map in
5 that the document that you have in front of you in fact
6 is a deviation from that guideline, where if you
7 turn -- I will just lead you as to where that would be
8 quite clear, you will note that the proposed
9 prescription, if you turn to -- let's number the pages
10 of this document so we don't have this problem again.

11 And if you note that there is a proposed
12 prescription --

13 A. Which page?

14 Q. On page 5. The second paragraph
15 indicates you should make reference to part 2, Section
16 2, alternative No. 2 and part 2, Section 3 for the
17 prescription.

18 If you turn back to alternative 2 on page
19 3 and you look at the harvest prescription, would you
20 agree that if you look at the activities which are
21 permitted in the zone from 300 metres to a thousand
22 meters it is not in accordance with the guidelines, but
23 is a deviation in that it is allowing one
24 feller-buncher and one grapple skidder in that area
25 prior to September the 1st?

1 A. Yes. I would agree with that and I
2 would also add to that that in our proposal if we had a
3 deviation we've already led evidence saying that we
4 would do something much similar to this.

5 Q. All right. That's one of the points
6 that I wanted to make. This document which you refer
7 to as being -- as I thought you were suggesting that
8 the process would unnecessarily produce documentation,
9 is a document which would be prepared in accordance
10 with the Ministry's proposal?

11 A. Yes.

12 Q. And do you have any reason to
13 criticize the analysis that's here?

14 A. Absolutely no reason to criticize it
15 whatsoever, and I am led to understand that this type
16 of documentation would occur even if the guidelines
17 were applied, that if you were looking at modifying
18 operations, which is permissible, that you would have
19 similar documentation.

20 Q. Let's not go back over all that and
21 we can leave all that as a matter of argument.

22 Were you or are you familiar with any of
23 the evidence given in Panel 15 regarding the Red Lake
24 Plan, in particular the AOC documentation of it?

25 A. I believe Mr. Lindgren filed some of

1 that documentation and additional AOCs from the plan
2 approval.

3 Q. Yes. Are you aware that during the
4 cross-examination by Mr. Lindgren and others there was
5 a suggestion that the area of concern documentation
6 which was produced in the Red Lake Plan was somehow
7 sufficient in terms of the amount of detail and the
8 environmental analysis contained therein -- somehow
9 insufficient in relation to --

10 A. That was my understanding of the
11 evidence, yes.

12 Q. Are you familiar enough with the AOC
13 documentation that was being criticized in that case to
14 confirm or agree with my suggestion that this document
15 which is prepared in accordance with Exhibit 1028,
16 which was partially in response to that criticism,
17 provides substantially more analysis and documentation
18 of the reasons for the prescription than did that
19 material that was criticized?

20 A. I would -- what I would say would be,
21 in my recollection of the material that was put forth,
22 a number of the guidelines -- or a number of the AOCs
23 had "see guideline", Fish Habitat Guideline, and in
24 fact what they have done in this particular case with
25 the heronry rookery is they have taken some of the

1 extracts from the guidelines and applied it.

2 And I indicated a similar problem with
3 the documentation that was provided for those
4 additional AOCs in the Red Lake Crown, is that most of
5 them just refer to the guidelines and I would have to
6 have that exhibit in front of me to verify that, but I
7 think that's my recollection.

8 In most cases it had "see Fisheries
9 Habitat Guideline" and the point you are trying to make
10 is, yes, that is a good idea and wherever you have an
11 AOC with a fishery concern the public should know that
12 the appropriate level of documentation and
13 justification for operating in the guidelines is
14 definitely contained in the guidelines. We would
15 support that.

16 Q. Now, the Ministry's present process
17 in accordance with Exhibit 1028 would require this kind
18 of a documentation where the guideline provides general
19 direction. Do you remember the example I gave to Mr.
20 Innes of Section 4C of the Moose Habitat Guidelines?

21 And, again, on the assumption that that
22 guideline cannot be made more specific, you can't get
23 more directness in the guidance given at the present
24 time, is it the Ministry's view that this kind of
25 analysis is unnecessary?

1 A. Yes, I would agree--

2 Q. The Industry's, pardon me, the
3 Industry's position?

4 A. --it is the Ministry's view.

5 Q. It would be unnecessary.

6 A. Whose view are you speaking to?

7 Q. I'm sorry. Would the Industry
8 believe that that documentation would be unnecessary?

9 A. That has been our evidence.

10 Q. Okay. Would you agree with me that
11 if this kind of analysis was created in relation to
12 situations such as Section 4C of the Moose Habitat
13 Guidelines, leaving aside Industry's view that it is
14 unnecessary, would you agree that this kind of
15 documentation would provide more information and be
16 more responsive to those people who want to see the
17 technical underpinnings of AOC prescription setting
18 than the Industry's proposal?

19 A. What our evidence is, is that
20 guidelines that are existing now should be reviewed and
21 revised where necessary to provide some clarification
22 and hopefully a range of acceptable practices, and as
23 long as you operate within that range that
24 justification, if you could put it that way, and the
25 documentation, would be contained in the guidelines

1 similar to what it might be in the moose guidelines in
2 term of a little explanation and people could go there
3 and refer to that, under these situations you do these
4 types of things, and wherever we deviated from that we
5 would do documentation much similar to what MNR did for
6 our company with the heron rookery that we encountered
7 as we were out cutting an actual harvesting block.

8 I'm not sure that I can add a whole lot
9 more to that.

10 Q. All right. Except that you prefaced
11 your comments by saying, we are hopeful that the
12 guidelines could be amended, and my question to you was
13 hypothetically, assuming in relation to that subject
14 matter the guidelines -- it wasn't practical to make
15 them any more direct or definitive, would this
16 documentation not provide more information to those
17 people who want to know the technical underpinnings?

18 A. It is the Industry's view that the
19 guidelines can be revised and modified to make them
20 more explicit.

21 MR. FREIDIN: Excuse me, Madam Chair.

22 Q. Mr. Munro, if I have to I will refer
23 to the actual section of the transcript, but I thought
24 it was the evidence of this panel, and particularly Mr.
25 Innes, yesterday that whether the guidelines could be

1 amended to be made more definitive or provide more
2 directives was a matter of scientific knowledge, that
3 in relation to non-timber values this panel did not
4 have the expertise to take a position one way or the
5 other as to whether that was possible, that was the
6 reason that you suggested a senior technical committee
7 review that and it seems to me to be contrary to your
8 suggestion just now that it is the Industry's view that
9 they can be made more direct?

10 A. For sure. I stand to be corrected.
11 We certainly wouldn't be suggesting that they should be
12 reviewed and revised if we didn't think that there was
13 the potential for some more definitive direction.

14 Q. Would you look to Exhibit 1286B which
15 is the letter, and am I correct that the letter
16 indicates that the manner in which this particular
17 heronry rookery came to light was through
18 identification by Industry staff?

19 A. That's correct.

20 Q. And the Ministry indicates in the
21 third paragraph that they were appreciative of the
22 manner in which the situation was managed by the
23 company, that it was discovered by your field staff
24 during harvest operations and by promptly identifying
25 the wildlife value to this office we were able to

1 jointly negotiate operational modifications which
2 addressed the wildlife concern without excessively
3 disrupting your ongoing harvest activity.

4 I take it that that is an indication that
5 the process was working the way it should?

6 A. That's definitely an indication that
7 the district manager was very cooperative and the
8 company was very progressive in their attempts in
9 dealing with a newly identified value in the midst of a
10 harvesting operation, yes.

11 Q. All right. So we have the Industry
12 doing what it indicated it would do in its evidence and
13 that is notify MNR, we have evidence of a situation
14 which arose during operations which was addressed
15 jointly by MNR and the company, we have an area of
16 concern documentation which justifies a deviation from
17 the guidelines by showing three alternatives and
18 indicating why the preferred alternative was chosen,
19 correct so far?

20 A. Right on.

21 Q. This document would provide the
22 technical underpinnings to anyone who wanted to know
23 why the prescription was set the way it was in that
24 particular instance?

25 A. I would say under our proposal it

1 would provide the documentation for the deviation, yes.

2 Q. It seem to me, Mr. Munro, that this
3 particular exhibit, having regard to your
4 acknowledgement of all the facts that I just indicated,
5 just this particular document, is an example of the
6 process as presently in place by the Ministry working
7 and working quite well, not the opposite?

8 A. I wouldn't suggest that there -- we
9 have led evidence that the process that's in place does
10 work and what we are looking at is improving it.

11 I think what you have in front of you is
12 a good example of where they can be considerable
13 improvements where there is deviations from guidelines
14 and where there is justification for the documentation.

15 Where guidelines are routinely applied,
16 Mr. Freidin is absolutely right, there should be
17 substantially less documentation and what we are
18 suggesting is that documentation can occur on a map and
19 the detailed prescription can be outlined. I think
20 it's an excellent example.

21 MADAM CHAIR: Excuse me, Mr. Munro. Does
22 the Board have in front of it supplementary
23 documentation following Exhibit 1028 where there is no
24 deviation, where there is a standard documentation form
25 identifying an AOC?

1 MR. MUNRO: It is my understanding
2 that --

3 MADAM CHAIR: Other than the Red Lake
4 Plan.

5 MR. MUNRO: There wouldn't be a whole lot
6 of difference under the current system from what you
7 have here as a deviation and what would be normal
8 applications of the guideline.

9 MADAM CHAIR: That's your evidence and we
10 will here from the Ministry.

11 MR. FREIDIN: That is his view. If you
12 recall, Madam Chair -- first of all, I hear your
13 concern and it goes into my little black book on reply
14 evidence.

15 However, you will recall that there has
16 been some difference as to when alternatives must be
17 identified and analysed and as you recall, the
18 Industry's initial position was that it was required
19 for every area of concern and I tried through
20 cross-examination to indicate that that is not
21 necessarily the case.

22 So it's not correct to say this kind of
23 documentation would be required for all areas of
24 concern in accordance -- at least according to the
25 Ministry's process. We will clarify that and deal with

1 that in our reply evidence.

2 MR. MUNRO: In discussions with the
3 district, though, that put this documentation together,
4 they have indicated that that is their new format that
5 they have to follow and indeed they do under Exhibit
6 1028.

7 And I would suggest that possibly there
8 needs to be some clarification on a number of points
9 that Mr. Freidin was trying to make in terms of the
10 reserve and that should go out to the field immediately
11 and hopefully we would not have situations where, as
12 Mr. Suomu indicated, it takes 12 hours for a computer
13 to print the documentation. I think that documentation
14 that Mr. Suomu referred to is something like 3,000
15 pages.

16 So that is where our concern is. If, in
17 fact, it can be accommodated under the existing system,
18 then it should be and I hope it will be in the future.

19 MR. FREIDIN: A. And, Mr. --

20 MADAM CHAIR: I'm sorry, Mr. Freidin, one
21 other question on this point. We have evidence from
22 your witnesses that the heron rookery guidelines or
23 manual is one of the most specific of the examples that
24 we have.

25 MR. MUNRO: That's correct.

1 MADAM CHAIR: The instructions on how to
2 deal with this are very, very specific compared to the
3 other guidelines we have investigated.

4 MRS. MUNRO: That's right.

5 MADAM CHAIR: We have also heard from
6 your witnesses that they want flexibility with respect
7 to the application of the guideline and that the
8 flexibility when it come to something as specific or
9 direct as the heron rookery situation, the flexibility
10 would in fact not in what the guideline wants to
11 achieve but how you would go about doing that. So the
12 flexibility has to be in the acceptable practices.

13 MR. MUNRO: That's correct.

14 MADAM CHAIR: Regardless of what the
15 objective of the guideline is, Industry wants to have
16 more than one way of achieving that.

17 MR. MUNRO: That's true for a number of
18 guidelines.

19 MADAM CHAIR: Without having a deviation
20 from the guideline. You want built into, even
21 something like the heronry guideline, more than one way
22 of complying with it?

23 MR. MUNRO: I think in reply to your
24 question, the heron rookery one is becoming a sensitive
25 one for us because there is more herons out there than

1 we had ever imagined and they do have a tendency to hop
2 around the country, and that would be one specific
3 guideline that certainly our company and I believe Mr.
4 Suomu's company would support almost immediately and
5 review it in terms of the scientific context to see if
6 it can be modified or should be modified on a
7 scientific basis because it is beginning to cause us a
8 great deal of operating problems.

9 So we will live with the existing
10 guideline, but we will certainly recommend that it be
11 reviewed and reviewed quickly in order to possibly
12 allow for some of the things that you were speaking of,
13 but until such time that it was technically reviewed,
14 we would operate within the guideline as it exists
15 today.

16 MR. FREIDIN: Q. Now, just following
17 along from the question from the Chair regarding this
18 guideline perhaps being quite definitive in comparison
19 to some ones.

20 Page 13 of the Management Guidelines for
21 the Protection of Heronries in Ontario, you don't have
22 this, which is Exhibit 344 states as follows - this is
23 before they set out the 300 meter and thousand meters:

24 "In view of the varying sensitivity of
25 heronries in different colonies it is not

1 possible to set a precise distance that
2 will serve as a buffer zone in all cases.
3 Response to disturbance varies with
4 factors already discusses, including
5 geographical location, degree of
6 habituation to disturbance, size of
7 colonies, species present..." and so on.

8 I suggest to you, Mr. Munro, that even in
9 relation to that more definitive guideline than some
10 others, that it has general direction, that it requires
11 the application of professional judgment and knowledge
12 to develop a prescription as opposed to choosing one
13 that happens to be specifically listed and that, in
14 fact, is exactly what happened in this case if you turn
15 to page 4 of Exhibit 1286A where it indicates under
16 Environmental Analysis on page 4 that:

17 "The field inspection concluded that
18 the heronries do not appear to be overly
19 stressed by the presence of logging
20 activities within the area of concern.
21 Logging activities have occurred within
22 the 1,000 metres, heavy equipment
23 zone over the last few years which may
24 have allowed the nesting birds to
25 somewhat adapt to a disturbance.

1 Modified logging activities occurring at
2 the perimeter of the 1,000 meter heavy
3 equipment zone will allow the herons to
4 gradually adapt to the noise associated
5 with the harvesting crew..." and it goes
6 on.

7 So the biologist here took that
8 definitive guideline, if I can refer to that, looked at
9 this general direction, went out and did a field
10 inspection, made a determination that based on some of
11 the factors set out in the guideline it in fact was
12 acceptable that your company harvest within the 300 to
13 a thousand meters, but with minimal equipment; i.e.,
14 one grapple skidder and one feller-buncher.

15 I suggest to you, again, that indicates
16 that even with a guideline where you have some specific
17 direction as to zones, like reserves in modified
18 operations, there has to be room to exercise that
19 professional judgment and whenever you do it is
20 reasonable and necessary that there be an environmental
21 analysis explaining why you have come to that
22 particular conclusion.

23 A. I would agree. Under the current
24 guidelines you are absolutely right.

25 MR. INNES: A. No problem with that.

1 Q. All right. Now, you made reference
2 to Exhibit 1028--

3 MR. MUNRO: A. Or 7.

4 Q. --or 7 and you made reference to Mr.
5 Suomu's evidence about all of the computer runs.

6 You can confirm for me that that
7 particular exhibit and training in relation to the use
8 of that document is fairly recent, it is something
9 which started to begin -- it began after Mr. Bisschop
10 gave his evidence in January of this year, so it's at
11 least that new, that document?

12 A. I can't comment on that on it. I've
13 just talked to the plan author...

14 Q. All right. It is my information that
15 there are no plans at the moment which have been
16 approved which have been prepared using the specific
17 direction contained in Exhibit 1027, -8 and -9,
18 whatever they are, that that direction has gone out to
19 the field and it is being used to develop prescriptions
20 in areas of concern in plans presently being prepared?

21 A. I can only assume that's the case.

22 Q. So if we have a misunderstanding
23 regarding benefits that might arise out of applying the
24 instructions testified to by Mr. Bisschop, it is a
25 matter that could be addressed through training and

1 hopefully if training is successful there might be a
2 reduction in the documentation?

3 A. Training would definitely be a
4 component that would have to be addressed, workability
5 in terms of whether the actual document 1028 is
6 something that can actually be implemented in a
7 practical sense would have to be addressed and we'd
8 have to take a look at the end product.

9 There have been plans within the Kenora
10 area that have been prepared under this and it's my
11 understanding that they have sought some relief and
12 they have gone to Mr. Bisschop, I believe, and sought
13 some relief from this actual document and that has been
14 obtained and they are proceeding to do their plan under
15 the general direction provided in 1027.

16 Q. Okay. Those --

17 MADAM CHAIR: Excuse me, Mr. Freidin.

18 MR. FREIDIN: Sorry.

19 MADAM CHAIR: Mr. Munro, could you tell
20 the Board exactly what you do in your position when you
21 receive something like documents 1027, -28 and -29 from
22 the Ministry and you read that this is a direction and
23 you are to do something differently with respect to
24 timber management planning? What do you do?

25 MR. MUNRO: If it is a requirement,

1 obviously we have to comply with it.

2 MADAM CHAIR: How do you go about
3 understanding what it says?

4 MR. MUNRO: We certainly try and
5 understand and to a greater extent what it means. Most
6 of the interpretation is provided to us and it has
7 been -- my general experience is that there is not a
8 lot of discussion, this is the way it is and that's the
9 requirement and our interpretation is this is what you
10 have to do if you want to have an approved plan that
11 meets the requirements, go ahead and do the format as
12 it is laid out.

13 MADAM CHAIR: If you receive direction
14 such as this, would you understand it immediately?
15 Would you say: Oh, yes, I understand what they want me
16 to do?

17 MR. MUNRO: I think the first thing we
18 would do is go through and fill in the blanks from a
19 practical standpoint to see what it would mean and
20 where we had some misunderstandings or we had some
21 concerns, we would definitely bring that up with the
22 planning team to try and get further clarification.

23 MADAM CHAIR: And you would discuss that
24 with the district manager and the MNR people who are on
25 the planning team now?

1 MR. MUNRO: Right.

2 MR. MARTEL: Could I ask a further
3 question, then. When these sort of things are
4 occurring it reminds me of what goes on in teaching,
5 you get a directive from the Ministry saying you do
6 this sort of thing.

7 Is there ever any thought of when you
8 recognize a problem that Industry and the Ministry sit
9 down and develop a strategy to overcome a problem
10 that's recognized by either side, rather than simply
11 getting a directive fired off to it?

12 MR. MUNRO: Most definitely we try and --
13 when Mr. Lindgren had filed the additional AOCs for the
14 Red Lake Crown, he indicated it was under one page and
15 that was a cooperative effort between the Ministry and
16 the company -- and Mr. Suomu's company to come up with
17 something that meet the requirements of the day.

18 So, yes, we try and get together and sort
19 it out and come to some resolutions. In some cases it
20 is a misunderstanding on both sides. So we hope to
21 flush it through discussions, for sure.

22 MR. INNES: We tried that, Mr. Martel,
23 with the FMA Task Force Report, for example, which was
24 made up of Industry and MNR fairly senior level people
25 who would go out any say what was wrong with the

1 process, how could we fix it.

2 MR. FREIDIN: Q. Just to address the
3 concern I think raised by Mr. Martel. It is my
4 understanding that the Ministry and the Industry do, in
5 relation to many matters, sit down together and try to
6 work out common approaches to issues, but that doesn't
7 mean that they sit down on every issue and do that?

8 MR. INNES: A. That's quite true. For
9 example, there was a wildlife workshop, I understand,
10 about a month ago held at Lake Couchaching which there
11 were no Industry invitees, for example, much to our
12 surprise.

13 I'm sure to the other users' surprise
14 there have been things like the FMA Task Force Report
15 where they weren't involved. So it's a start, but an
16 imperfect process.

17 Q. Okay. And in relation to things
18 like, you know, timber management planning, it is my
19 information, Mr. Munro, that every year training
20 sessions, workshops, whatever you want to call them,
21 are held by the Ministry of Natural Resources in which
22 all people who are to prepare plans for the next
23 planning period attend and discuss issues in relation
24 to timber management planning and that would include
25 company representatives?

1 MR. MUNRO: A. We have sent company
2 representatives to those training sessions. I'm not
3 sure that one would classify them as discussions.
4 There is presentations made on what the requirements
5 are. I guess there is the opportunity to ask
6 questions.

7 MR. YOUNG: A. I can add. Sometimes you
8 ask questions and you don't get an answer. I attended
9 one in Kenora a year ago and I had some questions as
10 far as clarification matters and I think I addressed it
11 specifically to Mr. Bisschop at the Kenora one. So
12 there is some mechanism there. They don't always have
13 all the answers.

14 Q. All right. You are you saying that
15 they don't always have the answers in relation to
16 processes which - I guess an example is this one - are
17 new that they are trying introduce and you are both
18 sort of trying to find some sort of common ground on
19 some issues sometimes?

20 A. On some issues sometimes.

21 MR. FREIDIN: Those are my questions,
22 Madam Chair.

23 Thank you very much, Panel.

24 MADAM CHAIR: Thank you, Mr. Freidin.

25 Mr. Campbell?

1 The Board doesn't like the look of all
2 those yellow sticky slips in your documents, Mr.
3 Campbell.

4 MR. CAMPBELL: They were all yesterday's
5 slips and last night I was bludgeoned by Mr.
6 Sutterfield and Ms. Seaborn into not referring to many
7 of them, so I think you can relax.

8 MR. INNES: It is not just the Board,
9 Madam Chair, that doesn't like the look of all of
10 those.

11 MR. CAMPBELL: On this the matter you
12 don't count.

13 MR. INNES: Mr. Campbell, I've realized
14 that now for years now.

15 MR. MUNRO: That certainly is a
16 discussion...

17 CROSS-EXAMINATION BY MR. CAMPBELL:

18 Q. Panel, I would like to start with
19 just a number of very particular items relating in
20 particular to items contained in your terms and
21 conditions and I think some of them are simple
22 clarifications or updates to that material.

23 The first relates to term and condition
24 59(d) which can be found at page 53 of your terms and
25 conditions which are Exhibit 1271, and that term and

1 condition is a reproduction of the MNR's term and
2 condition about amending the area of the undertaking.

3 I would simply ask you to confirm that in
4 putting that forward that simply has more to do with
5 the time of preparation of this document and does not
6 represent any withdrawal from the agreement that was
7 reached at the negotiations that that ability to amend
8 the area of the undertaking would be removed?

9 MR. INNES: A. That is correct, Madam
10 Chair.

11 MR. COSMAN: Madam Chair, that was
12 actually prepared before those negotiations. So we are
13 party to that agreement.

14 MADAM CHAIR: Thank you. What was the
15 number of that, Mr. Campbell?

16 MR. COSMAN: 59(d).

17 MR. CAMPBELL: 59(d). It is on page 53
18 of Exhibit 1271 and I think, Madam Chair, the practical
19 effect is that that can simply be struck.

20 MR. COSMAN: It won't appear in our final
21 terms and conditions.

22 MR. CAMPBELL: Q. I then want to refer
23 to bump-up requests. My client, the Ministry of the
24 Environment, has the responsibility to administer
25 bump-up requests.

1 I am going to give a number of
2 references, Madam Chair, I think two or three. I don't
3 think the Board needs to turn them up. Again, I think
4 the point is simply one of consistency and I want to be
5 sure that these provisions are going to be amended to
6 be consistent.

7 The provisions I am referring to in the
8 terms and conditions relating to bump-up include term
9 and condition 24(a), term and condition 2(e)(iv),
10 including notice provisions relating to bump-up, terms
11 and condition 2(f)(iii). Those are the principal ones
12 that I focused on.

13 There may be others, but would you agree,
14 Mr. Innes, in all cases that the scope of the bump-up
15 request relates to the plan, to any component of the
16 plan and to any area of concern or value affected by
17 the plan?

18 MR. INNES: A. Yes, Madam Chair, we
19 would agree with that.

20 Q. So that in some cases in those
21 provisions where you refer to the plan and in other
22 cases where you simply refer to the components of the
23 plan, we should read in all cases that bump-up can
24 relate to the plan, a component of the plan and in area
25 of concern or value?

1 A. That is correct, Madam Chair.

2 Q. And, similarly, I just want to be
3 clear that -- I believe this was touched on by Mr.
4 Freidin, but in all cases where a time for a bump-up
5 request is specified, is it fair to say that the time
6 which you put forward as being the expiry date for the
7 ability to request a bump-up is 30 days from the giving
8 of notice of plan approval?

9 A. Giving of notice of final plan
10 approval, yes, that's correct.

11 Q. All right. And, again, where we see
12 any other words, references to draft, either through
13 your terms and conditions or your witness statement we
14 should read it as being 30 days from the giving of
15 notice of plan approval?

16 A. That's correct.

17 Q. This may have been dealt with, but I
18 just want to be absolutely clear for our purposes. In
19 Exhibit 1269, which is your statement of evidence at
20 page 35, you indicate that the supplementary
21 documentation is to be kept by the plan author and MNR
22 would refer a request for that documentation to the
23 plan author.

24 Conversely, in Exhibit 1217 at page 35,
25 which is term and condition No. 17, it indicates that

1 supplementary documentation is kept by the district
2 manager and available for public inspection.

3 Can you clarify for me, please, which
4 precisely we should -- which view of this we should
5 rely on.

6 MR. YOUNG: A. Mr. Campbell, we have
7 been giving evidence that as a result of the
8 negotiation sessions the supplementary documentation
9 would accompany the plan and be contained at both
10 locations, both the Ministry and the plan author's
11 office.

12 Q. All right. I am going to come back
13 later in my questioning about what constitutes
14 accompany the plan, but for the moment you are telling
15 me that, again, in all cases where we see in either
16 your statement of evidence or in the term and
17 conditions we should assume that the supplementary
18 documentation can at least be found at both locations?

19 A. That's correct.

20 Q. Now, again looking at your statement
21 of evidence, Tabs 1 and Tabs 2 have behind them
22 appendices 1 and 2 and here we are looking at Exhibit
23 1271. Am I correct that in reading --

24 MADAM CHAIR: Excuse me, that's exhibit
25 1269?

1 MR. COSMAN: Yes.

2 MR. CAMPBELL: Yes. Thank you.

3 Q. Am I correct that in reading the
4 terms and conditions, the terms and conditions in their
5 present form do not contain a description of the kind
6 of detail that is set out in appendices 1 and 2 behind
7 Tabs 1 and 2 in Exhibit 1269?

8 MR. INNES: A. That is correct. That
9 does not appear in the term and condition, Madam Chair.

10 Q. And do you agree that in order to --
11 given that at the end of this case it is the approval
12 and the terms and conditions which in effect survive,
13 that if your terms and conditions were to be adopted
14 there should be an explicit description in the terms
15 and conditions of exactly what is contemplated as being
16 the contents of that documentation?

17 A. That would be appropriate, yes.

18 Q. And at this point, can you advise
19 whether you intend to include such a description in
20 your September 30th filing?

21 A. Yes, we will do that, Madam Chair.

22 Q. Now, could we go then, please, to
23 Exhibit 1269, Tab 2, Table 1, page 62.

24 MR. COSMAN: Tab 2, Table 1...

25 MR. CAMPBELL: Tab 2, Table 1 and it can

1 be found on page 62 of the statement of evidence.

2 Q. This is part of Exhibit 2 which is
3 the integrated resource database relating to the
4 management unit, Mr. Innes; is that correct?

5 MR. INNES: A. That is correct.

6 Q. Now, I was somewhat confused when I
7 looked at this table and I think it's a simple heading
8 error, and I would just ask you to confirm that.

9 You will recall that there is a Table 1
10 in Appendix 1 that deals with targets assigned at the
11 district level and in the right-hand column has a level
12 of achievement associated with the district level
13 targets.

14 Would I be correct in reading the
15 right-hand column of Table 1 at page 62 that what is
16 intended is that there be recorded in that column the
17 level of achievement at the management unit level of
18 the management target assigned from the DLUG which
19 would be recorded on the left side of the table?

20 A. I would like Mr. Munro to answer
21 that. You are closing to it than I am.

22 MR. MUNRO: A. That's correct. It
23 should read forest management unit in the extreme
24 right-hand column.

25 Q. All right. So that, for example,

1 when you are looking at the targets across the column
2 there would be an assigned target for forestry, conifer
3 filled in on the left side and on the right side the
4 achievement of that target, both of those figures would
5 be at the management unit level?

6 A. That is correct, Mr. Campbell.

7 Q. And, similarly, if we look at the
8 other targets, if we look above, there are fisheries
9 targets. Again, the intent of this is to take the
10 fisheries targets to the management unit level on the
11 left side and to measure their achievement at the
12 management unit level on the right side?

13 A. Wherever possible that's the intent.

14 Q. I gather that with respect -- by
15 including these various items on this form you believe
16 that it is -- or the Industry believes that it is
17 possible to record these targets both in terms of their
18 assignment and their achievement at the management unit
19 level?

20 A. For the timber component aspect, yes.

21 Q. Well, this table does not address the
22 timber component aspect, as I understand it.

23 As I understand this table, it is
24 intended to be prepared by the district manager and it
25 speaks to the MNR targets. I am going to come to the

1 forest component side, but as I understood it, this
2 is -- for instance, if the fish target is a number of
3 fish this table with would show number of fish?

4 A. That's correct to the degree
5 possible.

6 Q. All right. And I take it that in
7 putting forward this table it is the Industry's view
8 that that is possible in the cases that are indicated
9 on the table?

10 A. Yes, that would be our view.

11 Q. Thank you.

12 MR. CAMPBELL: Now, I then want to file a
13 list which we have prepared and I provided to you
14 earlier today of the various tables which are called up
15 by your planning process and basically, Madam Chair,
16 really all this is is a concordance between the tables
17 provided in the Industry planning process and the
18 tables which are already called for by MNR in the
19 Timber Management Planning Manual.

20 There is one correction I have to make,
21 but if I could get this distributed to the Board, I
22 have provided copies to the Industry and....

23 MADAM CHAIR: Do you want an exhibit
24 number for this? That will be Exhibit 1287 and it is a
25 two-page comparison of tables that would be produced

1 through the Industry's proposed timber management
2 planning process.

3 MR. CAMPBELL: If I could get the exhibit
4 number, I'm sorry.

5 MADAM CHAIR: 1287.

6 ---EXHIBIT NO. 1287: Two-page comparison of tables
7 that would be produced through
8 the Industry's proposed timber
management planning process,
submitted by MOE.

9 MR. CAMPBELL: Q. Now, there is one
10 correction I think I need to make to this in light of
11 the OFIA interrogatory question 41 from MNR and that
12 is, on the second page under Appendix 4 it shows under
13 the OFIA/OLMA column Table 5, Summary of Values
14 Elevated to the Enhanced Planning Process and it shows
15 that as being a new table in relation to the Timber
16 Management Planning Manual.

17 Would I be correct in my assumption that
18 Tables 5A and 5B in question 41 of the MNR
19 interrogatories, in effect, change this from a single
20 table to two tables; one being a summary of values
21 elevated to the enhanced planning process and the other
22 table, 5B, being a summary of values where deviation
23 from guidelines and/or manuals and where no guidelines
24 are available? There is an additional Table 5B with
25 that heading?

1 MR. MUNRO: A. Yes, that's correct,
2 there is.

3 Q. In effect, those two tables replace
4 Timber Management Planning Manual Table 4.12, but are
5 somewhat more limited in their scope than 4.12. Is
6 that a fair characterization?

7 A. They're much similar to what 4.12 is,
8 yes.

9 Q. But they would not pick up all of the
10 prescriptions for all values as they are presently
11 proposed in the response to question 41?

12 A. That is correct.

13 Q. And in that sense they are more
14 limited in scope?

15 A. Yes, I would agree with that.

16 Q. All right. Now, dealing with that
17 limitation in scope. As I understand it, looking at
18 the map which is behind you and which exhibit number I
19 do not know.

20 MR. YOUNG: A. 1276.

21 Q. 1276. Under the present scheme
22 proposed by the Industry, the only place we would find
23 the prescriptions in the area of a value is by going to
24 the map; is that right?

25 MR. MUNRO: A. Under our proposal, yes,

1 that's correct.

2 Q. All right. And that's values that
3 are not elevated to the enhanced planning process,
4 deviations or where there is no guidelines. For those
5 ones there would be additional documentation?

6 A. That's correct.

7 Q. All right. Now, Mr. Martel some
8 number of days ago asked a question as to how do we
9 know that values are properly dealt with if they are
10 not covered in the documentation for deviation, no
11 guidelines or enhanced planning. Do you recall that
12 question?

13 A. Yes, I do.

14 Q. Wouldn't that problem be solved of
15 these values sort of simply being recorded on the map?

16 Maybe I should just pause for a moment.
17 It seems to me that where we have a number of maps, if
18 someone is trying to get an overview of a value in
19 which they have a particular interest, the way your
20 documentation exists now, in effect they would to pour
21 over all of these maps and hope that by doing so they
22 could find the occurrences of those values?

23 As a practical matter that's what they
24 would have to do?

25 A. That is correct.

1 Q. All right. Now, I suggest to you
2 that that's a bit of a problem in the sense that it's
3 very difficult to get any overview in respect of, say,
4 ospreys, you have to open up all the maps, peer through
5 them and hope you find them all.

6 I would suggest to you that this problem
7 would be solved if you produced what I will call a
8 simple index to the treatment of values, and to try and
9 be fair about this I will give you something of what we
10 have in mind.

11 What we have in mind is something which
12 simply identifies the value by some coding system and
13 identifies the guideline which has been applied, and
14 what I'm suggesting to you is that an index containing
15 that kind of information would give a simple overview
16 of how the values have been taken care of, they have
17 been identified through the planning process and that
18 that would be far preferable to having to pour over the
19 maps and being a simple index should not produce undue
20 amounts of documentation.

21 Is that something the Industry would be
22 prepared to consider as amending its planning process?

23 A. Yes, and I think we would certainly
24 look hard at that considering some of the confusion
25 that has come out of our presentation of evidence.

1 The other thing I think that we have
2 discussed as a panel is that the operational map that's
3 being prescribed and recommended in MNR's new terms and
4 conditions would also provide an excellent opportunity
5 to instead of having a code identifying a value, is
6 simply have it on a ledger and have the values and the
7 planned activities adjacent to those highlighted on
8 that map. So I think the two would provide a pretty
9 good combination.

10 Q. All right. And I guess in putting
11 forward this index, would it be fair to say that in
12 terms of additional documentation -- I mean, my sense
13 of it would be that probably this isn't going to
14 require a whole lot of additional documentation because
15 you have to monitor for compliance in any event and
16 someone somewhere must produce a list of these things
17 for some purposes and the list or the index would
18 contain at least the value, the guideline and the
19 prescription because all these things get field
20 checked.

21 So this is work, as I understand it, that
22 would basically be done in any event, but if it was
23 incorporated into the planning process would address
24 Mr. Martel's concern. Is that a fair summary?

25 A. I think that is a fair summary.

1 MR. CAMPBELL: Madam Chair, if we were
2 going to break for lunch this would be a perfect time.

3 MADAM CHAIR: We will adjourn for lunch
4 now. One moment, please.

5 ---Discussion off the record

6 MADAM CHAIR: How long do you think you
7 are going to be, Mr. Campbell? You are just getting
8 started I know, but do you have any sense of how long
9 you will take?

10 MR. CAMPBELL: I suspect that if we came
11 back at 1:30 I would be finished at four.

12 MR. COSMAN: I would be, subject to
13 anything I may add or subtract depending upon this
14 examination, in the range of an hour, an hour and a
15 half at most.

16 MADAM CHAIR: Well, the Board is prepared
17 to sit late this evening and I assume the witnesses
18 would also like to finish this evening. So I think we
19 should take the regular lunch break and keep going
20 after that.

21 Thank you. We will be back at 1:30.

22 ---Luncheon recess taken at 12:00 p.m.

23 ---On resuming at 1:35 p.m.

24 MADAM CHAIR: Please be seated.

25 Mr. Campbell?

1 MR. CAMPBELL: Thank you, Madam Chair.

2 Q. Gentlemen, I want to turn to a
3 discussion of objectives and targets and I guess I want
4 to focus principally for the moment on non-timber
5 values.

6 I would like to direct your attention to
7 page 17 of Exhibit 1269, your statement of evidence,
8 and I am going to read into the record the second
9 paragraph on that page. What's being discussed here is
10 the opportunities for public interest and you've
11 developed what you call two different levels of the
12 public interest and I want to particularly address the
13 second level, and what you say at page 17 is this:

14 "The second segment of the public
15 wants to be able to understand the
16 technicalities and rationale of the
17 decisions being taken. These groups and
18 individuals are generally interested in
19 broad district, regional and provincial
20 issues. The information requested by
21 this public must be addressed by
22 providing background information relating
23 to resource program objectives and
24 targets, as well as how these objectives
25 relate to the timber management plan

1 being produced."

2 Now, can I take it from that paragraph
3 when you are referring to "resource program objectives"
4 that you mean both timber and non-timber values? Would
5 that be correct, Mr. Innes?

6 MR. INNES: A. Yes, that is correct,
7 Madam Chair.

8 Q. And then if we go over to page 18,
9 the following page, under Section 3.1.1, there is a
10 list of background information being produced, Item C
11 is regional objectives and targets for the various
12 programs and Item D is district and management unit
13 objectives and targets, and can I take it again that in
14 both those cases it is for the various programs; that
15 is, the programs in relation to both timber and
16 non-timber values? Would that be correct, Mr. Innes?

17 A. I believe that's correct, Madam
18 Chair.

19 Q. Now, in the next full paragraph under
20 that list towards the bottom you say the following:

21 "Since the background information
22 provides the plan author with direction
23 and foundation for planning, it is
24 essential that this direction be relevant
25 to his or her forest management unit."

1 It goes on in explaining that to say
2 that:

3 "The district manager would prepare an
4 executive summary outlining the resource
5 program objectives and targets for the
6 forest management unit based on the
7 provincial and regional information. The
8 results of the analysis would be
9 highlighted, particularly if the
10 established targets for the forest
11 management unit are unrealistic.
12 Significant problems and issues would be
13 identified and proposed strategies
14 developed to address specific problems or
15 issues."

16 Again, Mr. Innes, I would ask you to
17 confirm that all of that which I have just read relates
18 to both timber and non-timber objectives and targets?

19 A. Madam Chair, that is correct.

20 Q. All right. Now, I would like to take
21 an example of how this integrated planning scheme that
22 you've put forward to this Board would work using some
23 of your -- and basically just run through the process
24 as I understand it and I would ask you to correct me
25 anywhere if I am wrong, but this is how we understand

1 it to work and I would like to know, as I say, if I am
2 correct or not.

3 At the management unit level - I will use
4 moose as an example - in Appendix 2, that appendix in
5 its preparation would do two things. It may do some
6 other things, but it would do at least two these
7 things: It would have MNR set out the moose targets
8 and those are expressed as number of animals, number of
9 hunter opportunities, et cetera; and then the second
10 thing the appendix does is it would say, in order to
11 produce those numbers the Industry must provide a
12 specified amount of forest cover and, as I understand
13 the Industry position, the Industry would take that
14 direction as to forest cover from MNR and then proceed
15 to prepare its plan on that basis, the target having
16 been translated into forest cover. Is that a fair
17 summary so far?

18 A. That's very close to being correct,
19 Madam Chair. I believe Mr. Campbell said the Industry,
20 it's really the plan author, but be that Industry or be
21 it MNR.

22 Q. Yes.

23 A. And yes, the target would be
24 translated into a timber management component,
25 presumably in some degree of specificity and it would

1 then go into the timber management plan to be dealt
2 with.

3 Q. All right. But MNR's responsible for
4 translating its target which may be expressed in
5 whatever terms into forest cover terms and then it's
6 the forest cover terms that the plan author proceeds to
7 prepare the plan on; is that correct?

8 A. That is correct.

9 Q. All right. Now, that proceeds, the
10 plan is then prepared and implemented and, as I
11 understand it, as you come up then to the next plan
12 preparation, the next cycle through the planning
13 process, again at least two things happen: On the one
14 hand, there is prepared a report on past forest
15 operations which identifies whether the specified
16 amount of cover was in fact provided. Do I have that
17 right?

18 A. That is correct.

19 Q. And so that to the extent that in
20 response to a moose objective a specified amount of
21 cover was put forward in the plan, the report of past
22 operations would say that amount of cover was or was
23 not provided?

24 A. Correct.

25 Q. Then the second thing or on the other

1 hand, this planning process that you people are putting
2 forward would have MNR assess how it's doing on meeting
3 its moose targets and MNR would prepare an analysis
4 setting out the relationship between the level of
5 achievement of the number of moose or however its
6 target is expressed for that non-timber value and the
7 relationship between that number and the amount of
8 forest cover provided, but that analysis relating to
9 the achievement of the numerical target against the
10 forest cover that was provided, that's done by MNR; is
11 that correct?

12 A. That's correct.

13 Q. And I have described the process
14 accurately?

15 A. I believe so, yes.

16 MR. MUNRO: A. Yes.

17 Q. All right. Now, then we are sort of
18 in the second iteration of planning again, just to
19 remind you. Then depending on what that MNR analysis
20 has shown, the forest cover target would again be set
21 or reset for the plan author for the next planning
22 period?

23 MR. INNES: A. That's correct.

24 Q. Okay. And in fact the amount of
25 forest cover could be set higher or lower depending on

1 MNR's assessment of the requirement for additional or
2 less forest cover to produce the appropriate number of
3 moose?

4 A. That's correct, or it could be in
5 different cover types or whatever adjustments deemed
6 necessary in terms of forest cover.

7 Q. All right. Now, the bottom line that
8 I take from this from this is that the intent of your
9 planning scheme is, perhaps not surprisingly, to do
10 exactly what the title says, to produce an integrated
11 resource plan.

12 You really want this all looked at on an
13 integrated basis with these feedback loops?

14 A. That's correct.

15 Q. And in your scheme, the non-timber
16 objectives are not just put forward for information
17 purposes, those non-timber objectives have to be
18 incorporated into the planning process in order to
19 achieve integrated resource management?

20 A. Perhaps I can express it in different
21 words, Madam Chair. Our understanding is that it is
22 virtually impossible to arrange for overall
23 manipulation of the forest for the many benefits it
24 provides unless you consider the other benefits on an
25 integrated basis and plan for them at the same time you

1 are planning for the production of timber.

2 I'm not sure that says the same thing as
3 Mr. Campbell does or not; it may or may not.

4 Q. So as I understand it, you actually
5 want to take these non-timber objectives that have been
6 identified and incorporate them into an integrated
7 planning process?

8 They are not just provided so you know
9 what they are, they are provided to be used?

10 A. That's quite true and and we want to
11 plan for the timber management component of those other
12 resources at the same time that we plan for the timber
13 management resource itself.

14 Q. All right. And the Industry
15 position, as I understand it, is that we need to be
16 explicit, as explicit as it is possible to be in
17 setting out the feedback loops between the timber and
18 the non-timber values in order to do that integrated
19 planning?

20 A. That's correct, yes.

21 Q. And I take it that by being much more
22 explicit about these feedback loops you believe your
23 planning framework is a considerable improvement over
24 MNR's?

25 A. That is true.

1 Q. Now, I would like to refer you to MOE
2 term and condition 5.

3 MR. CAMPBELL: If the Board has Exhibit
4 1270 filed by Mr. Cosman it has all of the terms and
5 conditions in it and behind Tab 2 are the MOE terms and
6 conditions.

7 Q. MOE term and condition 5, I am going
8 to suggest to you, says or adds two paragraphs two --
9 or two subparagraphs which explicitly address this
10 matter, and although I will freely admit that the two
11 paragraphs aren't put forward quite as elegantly as
12 your entire planning framework, I am going to ask you
13 to agree that the purposes of our 5(a) and (b) are
14 entirely consistent with the planning process
15 objectives that you put forward.

16 The two items that we have added to terms
17 and conditions in our term and condition 5 dealing with
18 objectives and strategies read as follows:

19 "(a) timber management planning
20 objectives shall be stated for both
21 timber and non-timber values; and,
22 (b) the discussion of problems and issues
23 shall include an explanation of
24 cause/effect relationships between the
25 stated objectives and steps being taken

1 to implement those objectives."

2 Now, am I fair in assuming that those two
3 items are entirely consistent with your approach to
4 integrated resource management planning?

5 MR. INNES: A. I believe that they are,
6 Madam Chair, as I understand term and condition MOE No.
7 5(a) and (b).

8 Q. So they would, in fact, be quite
9 complimentary to your scheme?

10 A. Yes, that is true.

11 Q. Okay. Now, against that background,
12 I was somewhat confused yesterday by a discussion that
13 you had with Mr. Freidin with respect to pages 96 and
14 97 of Exhibit 1269 which is your statement of Panel 10
15 evidence.

16 If you could go to those pages, please.
17 This is in the section of the document outlining the
18 contents of the integrated resource plan for timber
19 management and I want to direct your attention to
20 Section 4, Management Objectives and Targets.

21 MADAM CHAIR: Which page is that, Mr.
22 Campbell.

23 MR. CAMPBELL: It starts at 96.

24 MADAM CHAIR: Thank you.

25 MR. CAMPBELL: Section 4 on that page.

1 Q. Now, Mr. Innes, we have read those
2 pages as saying that this area of the integrated
3 resource management plan would discuss objectives and
4 targets for both timber and non-timber values. Is that
5 a fair reading of what's intended by that section?

6 MR. INNES: A. I will ask for help if I
7 get off line here, Madam Chair, but my understanding of
8 this section is, this is the timber management targets
9 and the timber management component of the other
10 resource values in this section, Mr. Campbell.

11 Q. But is it fair to say that in terms
12 of the manipulation of the forest cover, this section
13 would address that matter and set out or discuss the
14 objectives and targets that are intended to be realized
15 by that manipulation for non-timber values, as well as
16 discuss objectives and targets for timber values?

17 A. This section leads as a natural
18 progression from the following sections -- sorry, from
19 the preceding sections in terms of it goes from the
20 generalities of the other resource programs, including
21 all the things that will be involved with them, and
22 here in Section 4 it comes down to the timber
23 management component of those other resource programs.

24 So it's a natural progression from the
25 broad to the specific timber management target which

1 this plan must deal with, but it allows a person
2 reading the plan to relate that specific timber
3 management target for those other resource values back
4 to the broader program itself.

5 Q. And by the broader program you would
6 include there non-timber values as well?

7 A. That's correct.

8 Q. So what we have seen this Section 4
9 as being is it really draws from your Appendix 2 and it
10 draws from your report on past forest operations and it
11 puts those things together and discusses management
12 objectives and targets for both timber and non-timber
13 values against that background of Appendix 2 and the
14 report of past forest operations?

15 A. I can agree with that provided you
16 say the timber management component. We are talking
17 forest manipulation here, we are talking about hectares
18 of land as to what you do with those.

19 Q. All right. But I take it that the
20 intent here is to, again, contribute to closing this
21 feedback loop through this section back to Appendix 2
22 and back through the report on past forest operations?

23 I don't care where you come into the
24 circle, but there are links forward from Appendix 2 and
25 Appendix 3 of the report on past forest operations to

1 this section and then this section should let you link
2 back then as well to Appendix 2 and the report on past
3 forest operations?

4 A. That's quite correct. If you see a
5 target in here for forest cover for moose - using this
6 one - you should be able to find in Appendix 3 and
7 Appendix 2 why that particular target is there to the
8 extent that it is and how it meshes in to the overall
9 moose management program.

10 Q. Now, you are recommending, as I
11 understand it from the Industry perspective, that the
12 best way of handling this integrated resource
13 management approach is to have Industry responsible
14 only for producing specified amounts and types of
15 forest covers, and you agree I think quite clearly in
16 your evidence that it isn't appropriate for the
17 Industry in operating its FMAs, in any event, to bear
18 the full responsibility for the management of
19 non-timber resources?

20 Is that sort of a fair capsulization?

21 A. That's what the intent of our
22 evidence is.

23 Q. And does this responsibility for
24 forest cover which the Industry has set out in its
25 scheme constitute active management as that term is

1 used on page 28 of the report on the task force on
2 forest management agreements, which is Exhibit 940?

3 I would like to know how your scheme
4 relates to that document and I'd ask you to turn it up
5 because I want to be sure we are dealing with the same
6 words.

7 A. Page 28, Mr. Campbell?

8 Q. Yes, Page 28, it's Exhibit 940. I
9 guess in particular on that page 28 I am referring to
10 recommendation 13 that:

11 "The Ministry of Natural Resources and
12 willing agreement holders negotiate
13 a further agreement to include active
14 management of the agreement area for
15 other forest uses and values with
16 compensation to the agreement holder for
17 this management."

18 Does this scheme which you have outlined
19 in your planning process fall within the definition of
20 active management as that term is used on page 28 of
21 Exhibit 940?

22 A. Madam Chair, the forest industry's
23 proposal in front of this Board did not use that
24 section of the report of the task force on forest
25 management agreements in terms of putting together its

1 proposal.

2 What is indicated in the task force
3 report is much broader than that and active management
4 would include something more than manipulation of the
5 forest cover, and at the time the task force report was
6 written it was a different approach to management than
7 the one which we are indicating in this particular
8 submission in front of the Board.

9 Q. All right. So that your planning
10 process does not fall within what was contemplated as
11 active management in Exhibit 940? I think that's what
12 you've said; isn't it?

13 A. If Exhibit 940 is the task force
14 report you are correct.

15 Q. Thank you. I believe it is the task
16 force report.

17 If I understand that correctly, if in
18 fact it does not constitute active management, the
19 manipulation of the forest cover that the Industry
20 would be responsible would not give rise to any claim
21 for compensation for forest cover left to meet
22 non-timber objectives; is that fair?

23 A. We have made no such suggestion.

24 Q. All right. Nor can I read 940,
25 Exhibit 940 that we have just referred to, as

1 suggesting that there is any reason for such a claim to
2 compensation?

3 A. I don't believe that's correct, Madam
4 Chair. Recommending 31 -- sorry, 13, on page 28 of the
5 task force specifically speaks to compensation to the
6 agreement holder.

7 Q. In the case of active management.

8 A. In the case of active management as
9 contemplated in that task force report.

10 Q. All right. We have established that
11 what is contemplated in the planning process is not
12 active management and what I am asking you is to
13 confirm that there will be no claim for compensation
14 for forest cover left to meet non-timber objectives
15 under your planning scheme?

16 A. We did not make any such suggestion
17 Madam Chair, no.

18 Q. Nor do you have any intent to make
19 any such suggestion? No, I know you didn't, but I am
20 sort of looking ahead.

21 A. I am not prepared to answer that
22 question yes or no at this time because we do not know
23 where the final terms and conditions may lead us to,
24 Madam Chair.

25 Q. I am asking you on your scheme. If

1 this Board approved your scheme exactly as specified, I
2 want to know whether or not the Industry would make any
3 claims for compensation for forest cover left to meet
4 non-timber objectives?

5 A. Thank you for the clarification.

6 Under that scenario the answer is no.

7 Q. I take it from that very careful
8 answer that to the extent that we sort of start getting
9 a little bit distant away from your scheme the "no"
10 becomes less and less certain?

11 MR. COSMAN: It's certainly not something
12 that that panel can answer at this time, if you move
13 away from the scheme. If you are trying to say under
14 what circumstances would Industry be making claims for
15 compensation or asserting claims for compensation with
16 the government, we would want to detail with the
17 scenario very precisely in order to deal with it.

18 I think you have got a very clear answer
19 to your question; that is, with respect to the proposed
20 planning system that is not an issue.

21 MR. CAMPBELL: all right. That is not an
22 issue with respect to the propsed planning system.

23 Q. Under Exhibit 940, that would
24 indicate that to the extent that you did do active
25 management there might well be some claim for

1 compensation and presumably there could be infinite
2 variations of grey in between. Is that a fair summary?

3 MR. INNES: A. That is a fair summary
4 and compensation may take very many forms.

5 Q. Perhaps you better explain that.

6 A. You will see under recommendation No.
7 13 it says Compensation. Compensation could be direct
8 financial payment, it could be offsetting stumpage, it
9 could be avoiding -- and there is no way of dealing
10 with that in this report. It opens the door for
11 possibilities as to what the intent was.

12 Q. In term of any of the alternative
13 sets of the terms and conditions that have been put
14 forward by various parties to this hearing, would the
15 implementation of any of those alternative planning
16 approaches which are contained within other parties'
17 terms and conditions, would they lead to any claim for
18 compensation from the Industry in respect of the
19 implementation of those?

20 A. I'm not prepared to answer that,
21 Madam Chair. We have not looked at the other terms and
22 conditions in that light at this point in time.

23 Q. Let me limit my question then for the
24 moment to MNR's proposed terms and conditions. Is
25 there anything in the revisions to MNR's terms and

1 conditions which would lead to claims for compensation
2 from the Industry?

3 A. I'm not prepared to answer that
4 either since we've only had those a few days prior to
5 this hearing starting -- at least the resumption of
6 this hearing and, again, we have not analysed those in
7 that particular term.

8 MR. CAMPBELL: Madam Chair, I would like
9 an undertaking from Mr. Cosman, if I could, to have the
10 Industry consider that question with respect to MNR's
11 proposed terms and conditions, as to whether the
12 Industry views anything in those terms and conditions
13 as giving rise to additional claims for compensation,
14 as broadly defined as they want it.

15 And in my submission, that information is
16 essential to an evaluation of the advantages and
17 disadvantages of the alternative planning schemes that
18 are before you. The Act requires advantages and
19 disadvantages in terms of the effect on the environment
20 and certainly these kinds of expenditures of public
21 money fall well within the definition of the
22 environment that is contained in the legislation, and I
23 would like to ask for an undertaking to get an answer
24 to that question.

25 MADAM CHAIR: Mr. Cosman?

1 MR. COSMAN: Madam Chair, I have not yet
2 had an opportunity to discuss this matter with my
3 clients. What I will do at this time is that I will
4 tell my friend that I will take it under advisement,
5 which generally means no unless I come forward with an
6 answer, but you can be sure that if we can answer it we
7 will; if we don't, my friend will have the remedy of
8 such remedies as are available to him.

9 But at this point in time, I don't know
10 the ramifications of that question with respect to
11 whether it even can be done given the costliness of
12 some of those terms and conditions that are proposed,
13 but I will certainly discuss this and come back with an
14 answer as quickly as possible so that Mr. Campbell
15 could then, if he wants, make some other inquiry of you
16 or ask for some direction from you.

17 MR. CAMPBELL: Well, I am not sure I am
18 entirely content with that, Madam Chair, as you might
19 expect.

20 Q. Perhaps I could -- if that's all Mr.
21 Cosman is willing to commit to at the moment, I would --
22 just before asking for a ruling -- ask Mr. Innes to
23 confirm that one matter of concern to the Industry is
24 in fact the costs which are borne by the Industry in
25 implementing any planning scheme, including its own?

1 MR. INNES: A. Yes, I would confirm
2 that, Madam Chair.

3 Q. Can we agree as well that different
4 planning schemes will have different advantages and/or
5 disadvantages depending on the amount of public funds
6 which are expended; that is, it is surely a matter of
7 interest to this Board if a planning scheme is going to
8 involve large expenditures of public money versus cost
9 being borne by the Industry. You would agree with
10 that?

11 A. I will agree with that, Madam Chair,
12 yes.

13 MR. CAMPBELL: Madam Chair, in light of
14 those answers, it is my submission that the Board
15 should require Mr. Cosman to provide an Industry answer
16 as to whether or not, and I will limit my question for
17 the moment to -- I will limit my question to the MNR
18 planning scheme, whether or not the implementation of
19 that scheme in its current proposal would result from
20 the Industry in any claims for additional compensation.

21 It would be my submission that without
22 that information it will be very difficult for the
23 Board to complete its responsibilities.

24 MR. COSMAN: Madam Chair, I am, at this
25 point in time, not in a position to make that

1 undertaking and what I am saying is that it's not that
2 our client won't do it. No. 1, I don't know if we can
3 do it; No. 2, if it had been the subject of an
4 interrogatory by my friend we could have gone through
5 the process of discussing it and determining a position
6 and answering it.

7 At this point in time, until such time as
8 I have had the opportunity to discuss it with my
9 clients, I'm not in a position to make the undertaking,
10 but what I'm saying to my friend is, to avoid argument,
11 I don't know what the full dimension of that is.

12 For example, until we hear from the other
13 parties as to what their terms and conditions mean, it
14 is very difficult to even ascertain in some cases, from
15 our reading of them, what the implications of those
16 terms and conditions will be. Some parties, such as
17 NAN, haven't even given terms and conditions in a form
18 that are fully understandable on their face. Are we
19 talking about settlement of land claims as part of
20 their package --

21 MR. CAMPBELL: Just a minute. I don't
22 mind an objection --

23 MADAM CHAIR: I believe it was
24 specifically -- the undertaking applies only to the
25 Ministry of Natural Resources.

1 MR. COSMAN: All right. If my friend
2 would allow me, I will get back very quickly, but what
3 I would like to do is have the opportunity, since I
4 didn't have that opportunity by way of an
5 interrogatory, to review it with my client and then
6 give an answer. If the answer is no, then you can make
7 a ruling as to whether you are obliged, but I'm not
8 even in a position to say at this time why it should be
9 no or yes. I would like to opportunity to review that
10 with my clients.

11 MR. CAMPBELL: I think that is quite
12 fair, Madam Chair in that, as I understand it, none of
13 the witnesses can answer the question in any event.

14 MR. COSMAN: That's right.

15 MR. INNES: Well, there is a very good
16 reason for that, Madam Chair, in that a lot of the MNR
17 terms and conditions just says "MNR shall ensure" and
18 there is no direction as to who is going to undertake
19 those tasks.

20 And, as I say, we haven't even begun to
21 explore with them or anybody else as to what their
22 intent is on this. So it hasn't been looked at from
23 our point of view.

24 MR. COSMAN: I will get back to my friend
25 with an answer and if he feels that he needs to take it

1 further with the Board and obtain a ruling, I suggest
2 that would be the appropriate way to deal with it.

3 MADAM CHAIR: Is that satisfactory, Mr.
4 Campbell?

5 MR. CAMPBELL: I am quite content with
6 that. And in saying that the panel is not prepared
7 today to answer that question, I don't intend to be
8 critical. The way this line of questioning developed,
9 with the various permutations and combinations, I
10 rather expected they might well not be.

11 So I don't want to be taken as being
12 critical to the panel in saying that, it is just a fact
13 of life. So that's fine. Now I can move on.

14 Q. Mr. Innes, would you agree that -- I
15 guess I want to direct your attention back to that
16 paragraph I read to you on page 17 which talked about
17 the second group of the public; the ones that needed to
18 have an understanding of these feedback loops, the
19 rationale, the objectives and so on.

20 Would you agree that the plan should be
21 complete in that anyone who is interested can by
22 reviewing the plan see the major decisions or judgments
23 that have been made, the rationale for those
24 decisions and judgments with respect to both timber and
25 non-timber values?

1 MR. INNES: A. Certainly for the timber
2 values, Madam Chair, and for the timber management
3 component of the other resource values, I would not
4 expect there be in this plan a rationale of why a
5 hunting was set from day "x" to day "y", for example.

6 Q. I agree. We are not talking about
7 how the specific target itself gets established from
8 non-timber values. What we can see, though, is the
9 major decisions or judgments that are made in
10 integrating those timber decisions and on non-timber
11 value decisions?

12 A. Yes, that is correct, Madam Chair.

13 Q. All right. Now, at page 35 of
14 Exhibit 1269 there is a list of supplementary
15 documentation. It includes five summaries plus
16 analysis of alternatives considered for roads and for
17 alternatives considered in relation to the enhanced
18 planning process.

19 Now, as I understand your planning
20 process, none -- and I may be wrong on this, and if I
21 am I will be delighted, but am I right that none of
22 this supplementary documentation is intended to
23 accompany the plan?

24 If a plan it being reviewed, for
25 instance, by some of these people who fall within the

1 second audience you see for the plan or the second
2 group that's listed on page 127, they don't get, when
3 they ask for the plan, any of the supplementary
4 documentation?

5 A. Mr. Munro can probably take a crack
6 at that one.

7 MR. MUNRO: A. Just for clarification,
8 Mr. Campbell. Are you suggesting that if anybody asked
9 for the integrated resource plan for timber management
10 it wouldn't get the supplementary documentation?

11 Q. Yes.

12 A. That's probably true.

13 Q. All right. So what they get is
14 whatever is covered by Appendix 4, that's the
15 documentation?

16 A. Initially they would, but we have
17 made the executive summaries for the plan, as well as
18 the background information, the integrated resource
19 database, report on past analysis available upon
20 request.

21 If it was available, I would assume in
22 most cases it would be sent out as well, particularly
23 if the person had some understanding of the entire
24 process.

25 Q. So that when I look at all these

1 summaries listed in the supplementary documentation,
2 if, for instance, I was a group that had a known
3 interest in timber management, had participated in a
4 variety of issues here and there across the province,
5 if I said I would like to get a copy of the plan for
6 the integrated resource management plan for such and
7 such a unit, what you are indicating is probably in
8 those circumstances what I would get is not just the
9 plan but this supplementary documentation?

10 I see Mr. Innes nodding his head yes.

11 A. It would definitely be made available
12 at some central location for sure.

13 Q. Now, I guess the simple question I
14 have is, given that you agree with the objective of
15 having the plan being complete and that anyone who is
16 interested can by reading the plan see the major
17 decisions or judgments made for both timber and
18 non-timber values, why wouldn't you just append the
19 summaries to the plan?

20 Why make people go through this two step?
21 First of all, they have got to know they can ask for
22 this supplementary documentation if they don't get it
23 and then they have got to write and ask for it, and
24 then -- you know, do they have to ask for all seven or
25 do they have to ask for them individually.

1 You have got particularly in relation to
2 the summaries here, and there are five summaries, why
3 wouldn't you just append them to the plan and then you
4 have got it complete?

5 MR. INNES: A. I can start that
6 question, Mr. Munro could probably do a better job of
7 embellishing it because our experience has been that
8 most people, as we stated on page 17, are not
9 interested in that degree of detail.

10 There is a very significant proportion of
11 the public that wants to deal with the simple
12 attributes of a plan as to what what's going to happen
13 on the ground where, when. That's as far as they want
14 to understand it, and we have formed this opinion from
15 the very many open houses which have been hosted by
16 members of the Industry across the province.

17 Yet we see in our mind a necessity of
18 understanding the whole process which is why we
19 provided for a different segment of information which
20 will be available and can be made available.

21 And, Mr. Munro, maybe you want to add to
22 that.

23 MR. MUNRO: A. The only thing I would
24 like to add is that there would be some indication
25 obviously within the plan itself that supplementary

1 documentation was available upon request, could be made
2 available. That would be related to the plan.

3 So what we were trying to do, Madam
4 Chair, Mr. Martel, is allow people to focus and instead
5 of sending them a sack of information saying here is
6 the plan, sort it out, we send the information that was
7 most relevant to their interest and concerns and having
8 a mechanism in place where they can take that one step
9 further if they wanted.

10 Q. I understand all that and I agree
11 that if somebody comes in and they want to know what
12 you are doing here, when, an individual site-specific
13 concern, then you deal with that quite properly in a
14 different way from a group that falls into your second
15 category.

16 It seems to me you have got two problems
17 and I will be perfectly frank about them. First off
18 all, somebody asks you: I want to know what's
19 happening here, and they put their finger on a map or
20 they send you a sketch, what is happening right here,
21 or they phone you, what's happening on that point on
22 that lake.

23 I can't believe you are going to send
24 them the plan, it won't answer their question. It
25 seems to me that the people who get the plan must

1 almost by definition be people who write it and say: I
2 would like to reviewe your timber management plan, are
3 really in almost every case going to be your second
4 category of people, whether they belong to some bigger
5 group or not, they are interested in cause/effect
6 relationships, they are interested in a bigger view of
7 the thing than a site-specific concern and in that
8 case, just sending them the plan is neither an
9 efficient or foul solution, it gives them the bottom
10 line but it doesn't achieve any of the objectives you
11 set out for yourself on page 17.

12 Long speech, I'm not sure if it's a
13 question, but maybe you could respond.

14 MR. INNES: A. We can respond to that I
15 think. To the best of my knowledge, there have not
16 been a large number of requests - and maybe my
17 colleagues can help me here - from people outside the
18 planning area wanting copies of the plan as it now
19 exists.

20 If you take the timber management plan,
21 for example, with Abitibi-Price, we don't have people
22 from southern Ontario writing and saying: I want a
23 copy of your timber management plan or if it happens
24 it's rare. So we are talking about local people that
25 want to take something away with them and whatever

1 degree of detail they can get it locally is up to their
2 asking, be it simple be it complicated.

3 The second --

4 MR. MARTEL: Could I stop there.

5 MR. INNES: Yes.

6 MR. MARTEL: Does anyone recall every
7 getting a request for the entire plan? That's the
8 question I wanted to ask and Mr. Innes started to
9 answer and I just don't know -- and what would that
10 entail? How many boxes of material would you have to
11 send to them if you were going to send someone the
12 entire plan?

13 MR. CAMPBELL: Before they ask, are we
14 answering that in terms of the existing process or the
15 proposed process?

16 MR. MARTEL: I guess we could only ask
17 how many people have sought the plan or asked for the
18 plan, and it would be with the existing process and not
19 the new one down the road for the time being.

20 MR. MUNRO: No one in my experience has
21 asked for the plan.

22 MR. MARTEL: Just excerpts from it,
23 certain sections of it that they are interested in,
24 their own concerns.

25 MR. MUNRO: What are you going to do

1 here.

2 MR. MARTEL: Okay.

3 MR. YOUNG: That's my experience also,
4 and if they did respect the plan in the current status
5 it would probably take two boxes to send it.

6 MR. SUOMU: We've had no request at all
7 outside of the MNR region and they are supplied with an
8 extra copy and it would take three or four, five cubic
9 meet of material to be sent out under the present
10 system.

11 MR. FRY: I've had no request for that
12 information for my plan. I'm not sure whether the
13 Ministry has had requests for information.

14 In terms of the size without the
15 operating type maps, it would problem be four volumes
16 combined, about that thick. (indicating)

17 MR. MUNRO: Mr. Martel, you may remember
18 that when Mr. Hanna was cross-examining us he was not
19 only asking for the plan, but he was also asking for
20 the entire database to accompany the plan in order for
21 his clients, so they can sit down and do some type of
22 analysis and we had some degree of difficulty with that
23 in that we were hoping to accommodate that particular
24 type of request within our various committee structures
25 and not necessarily isolate provincial concerns and

1 focus them on a management unit concern.

2 We feel that there is a mechanism within
3 our proposed system that would allow for some broader
4 provincial type issues to be dealt with and regional
5 issuess as well.

6 The whole idea is to stimulate interest
7 and deal with people in the appropriate fashion and as
8 you recall with Mr. Hanna, we didn't get too far on
9 that in terms of providing the entire database that was
10 available just in terms of the magnitude that that
11 would take.

12 MR. CAMPBELL: Q. Mr. Munro, I didn't
13 make this up. I am reading the second paragraph from
14 your page 17 of the your evidence, it is you people
15 that have identified this objective as an important one
16 and an important public for you to address.

17 Let me start back into it just a little
18 bit by saying, at least with respect to MOE's review of
19 the plan, would you be prepared to see a term and
20 condition which required you or required whoever,
21 however, that MOE got the supplementary documentation
22 with the plan?

23 MR. MUNRO: A. I would think if the MOE
24 would like that type of information that yoy are
25 suggesting it be available. In some cases, that could

1 mean it would be available in a central location or in
2 some cases it could -- it will be reproduced depending
3 on what was appropriate.

4 Q. MOE has review responsibilities in
5 relation to these plans and I am asking is, is there
6 any objection from the Industry to a term and condition
7 that requires the supplementary information to come to
8 MOE with the plan? Is there any objection to that?

9 MR. INNES: A. None.

10 MR. MUNRO: A. None.

11 MR. MARTEL: Can I just get that a little
12 clearer from -- I realize I can't ask Mr. Campbell to
13 answer, but I'm not sure that he wants it for every
14 plan, though, or on request.

15 MR. CAMPBELL: No, we want --

16 MR. MARTEL: Do you want them sent ahead
17 of time or if you request it? I mean, you are going to
18 have a volume of material as well that you are
19 eventually going to have to store somewhere and I'm
20 just wondering if the ministry is interested.

21 MR. CAMPBELL: The ministry has review
22 responsibilities in relation to these plans--

23 MR. MARTEL: Yes, I understand.

24 MR. CAMPBELL: --and the position is that
25 it cannot properly understand the plan without the

1 supplementary documentation.

2 MR. MARTEL: Right. Okay. I just didn't
3 know whether you wanted certain plans. It's just a
4 matter of reality it comes, when the plan is completed
5 and approved you get it with everything else attached.

6 MADAM CHAIR: Before the plan is
7 approved.

8 MR. MARTEL: Or before, pardonme.

9 MR. COSMAN: Madam Chair, because of the
10 answers you got from the planning witnesses, unless
11 there is any difficulty, and I can't see there would be
12 any difficulty beyond this, you will probably now see
13 that term and condition in our final terms and
14 conditions.

15 MADAM CHAIR: I think we've heard from
16 the Ministry of the Environment that they want to be --
17 make the decision themselves as to whether or not they
18 sit on any planning team or any committee with respect,
19 and I think you would have to see the supplementary
20 documentation before making a decision about whether
21 they want to be a part of the actual planning team and
22 attend meetings and so forth.

23 MR. CAMPBELL: Yes.

24 Q. We really led exactly to my next area
25 which is, we have an understanding with the Ministry of

1 Natural Resources with respect to MOE's involvement
2 with the existing planning teams and I take it -- or
3 can I take it that this same kind of arrangement with
4 respect to your local committees, technical or
5 otherwise, would be satisfactory with the Industry
6 under its planning scheme? Mr. Innes?

7 MR. INNES: A. We have answered an
8 interrogatory, Madam Chair, of MOE suggesting that it
9 would be appropriate for them to be a part of the local
10 technical committee as per the arrangement we
11 understand made with the Ministry of Natural Resources
12 and discussed before this Board.

13 I would not at this time see MOE as a
14 part of the local citizens' committee as being a
15 government agency rather than a local citizen.

16 Q. You would have no objection to MOE
17 attending those meetings if it wanted to be fully
18 cognizant of what was going on in a particular unit?

19 A. I think that would be at the
20 discretion of the local citizens' committee to invite
21 MOE to attend those and I see no difficulty or I would
22 see no difficulty in MOE asking the local citizens'
23 committee if they could make a presentation or be
24 updated or whatever.

25 I think see being the local ccommittee's

1 decision rather than a standing order, shall we say.

2 Q. And I will put on my hat that is
3 somewhat broader than MOE for the moment with respect
4 to other government ministries beyond MNR with respect
5 to the various policy committees or the senior level
6 committees that you speak of.

7 Is there any particular reason that the
8 only ministry involved in those committees was
9 contemplated as being MNR? I would have thought that
10 at the policy level you might want some representation
11 from other ministries as well in those policy
12 development committees?

13 A. Indeed that's the case and it was
14 obscurely worded in our presentation perhaps, but the
15 intent was that MNR start with their programs
16 explaining their policies relative to forest management
17 and progress to other areas that were impacted by or
18 impacted forest management and so, as a result, MOE
19 would be a part of that process.

20 Q. All right. But I am here
21 representing more than just MOE from time to time and
22 with respect to other areas of policy concern to other
23 ministries, you see them automatically being rolled
24 into discussions of those items at the senior policy --
25 at the senior level committees?

1 A. Yes, that is correct, Madam Chair.

2 Q. Now, I guess we have to go right back
3 to the supplementary documentation. I have, I guess,
4 two little questions and one may be quite silly. Do
5 you see the supplementary -- is the supplementary
6 documentation intended to be available for review once
7 it is prepared at the open houses that take place after
8 its preparation?

9 MR. MUNRO: A. Most definitely.

10 Q. And if you look at your term and
11 condition 17, paragraphs (a) to (d) which is page 34 of
12 Exhibit 1271, you will see that the supplementary
13 documentation listed in that term and condition is
14 somewhat different from the supplementary documentation
15 listed in your statement of evidence.

16 Is that, again, simply a case that the
17 term and conditions haven't got quite caught up to the
18 evidence yet?

19 A. That's correct.

20 Q. And we can expect to see that in your
21 next round of terms and conditions?

22 A. That's correct.

23 Q. Consistent with the Panel 10
24 statement of evidence?

25 A. That's correct.

1 MR. COSMAN: What term is that, just for
2 my records?

3 MR. CAMPBELL: Term and condition 17 (a)
4 to (d), page 34 of Exhibit 1271 and of course what we
5 are interested in is the more exhaustive list on page
6 35 of Exhibit 1269.

7 MR. MUNRO: Madam Chair and Mr. Martel,
8 if I might add. In light of some of the concerns
9 expressed or views expressed by Mr. Campbell, I would
10 think we are going to take another look at some of the
11 documentation and it might be advantageous to have some
12 of that summarized, it's quite a bulky document right
13 now. There might be some way that we can streamline it
14 and make it more efficient.

15 MR. CAMPBELL: Q. I think in relation
16 to paragraphs (c) and (d) on 35 under Supplementary
17 Documentation in particular that there might well be an
18 opportunity there to develop a summary.

19 Let's not waste time about it today, but
20 we would be delighted to sit down and work that out.

21 MR. MUNRO: A. Yes. But in terms of the
22 wording that comes back, just with that proviso, okay?
23 It might not be documentation, it might be a summary of
24 documentation.

25 Q. Yes. I understand that and I invite

1 you to have a chat with us about it because I think we
2 are no more interested in being inundated with glaciers
3 of paper than anyone else is. We want useful
4 information.

5 A. I hear you.

6 Q. I want to go now to the tables that
7 are called up by your different appendices. We have
8 listed them in the exhibit that we filed earlier today
9 as Exhibit 1287. I don't think it's necessary to go to
10 them all in order to answer the question.

11 You would agree with me that most of the
12 tables are precisely the same as set out in the Timber
13 Management Planning Manual?

14 A. Yes, I would agree and we led
15 evidence in relation of that.

16 Q. Does the Industry in putting forward
17 those tables adopt the instructions associated with
18 filling out those tables that are set out in the Timber
19 Management Planning Manual?

20 A. Madam Chair, Mr. Martel, I would have
21 to take another look at it. I never really thought of
22 that framework.

23 I know we do have a couple concerns
24 regarding some of the silvicultural guides or
25 guidelines that we want to take a closer look at and we

1 we would certainly like to examine that a little
2 further in terms of we see some of those guides and
3 guidelines being revised to reflect something different
4 than what's in their now.

5 Q. Is that with respect to the
6 silvicultural guides for the different species?

7 A. That's what comes to mind initially,
8 yes.

9 Q. Now, you have been here throughout
10 the presentation by the Industry of its activities
11 panels?

12 A. No, I haven't.

13 Q. Has anybody else on the panel been?
14 Is anybody else familiar with the -- particularly our
15 cross-examinations on those activities panels?

16 MR. COSMAN: Maybe you can put a more
17 specific question, it might help them.

18 MR. CAMPBELL: Q. I find myself slightly
19 at a loss. You've have set out a whole list of tables,
20 same as the TPM tables.

21 In terms of understanding what
22 information is going to be on those tables, you don't
23 get it by looking at the table, you get it by looking
24 at the instructions as to what's supposed to go in the
25 table. That's the only thing that tells us, I take you

1 would agree, as to what is supposed to be there is the
2 instructions?

3 MR. MUNRO: A. I would agree and what I
4 would like to say is that we would definitely look at
5 those instructions in light of having to put them with
6 the table itself per se.

7 Q. All right. We have asked questions
8 in our cross-examination - Ms. Seaborn has in her usual
9 and sightful way - through the activities panels on
10 instructions of various of those tables and there has
11 been some problems with respect to the instructions?

12 A. I can recall a couple of things. One
13 was logging method as opposed to harvesting method; is
14 that...

15 Q. I think we have it clarified on the
16 record that what's intended in that column is
17 shortwood, tree-length, full-tree. I don't know that
18 that one remains in controversy, but there are other
19 things. I can think of other things in the renewal
20 table, for instance, where areas that were not expected
21 to regenerate naturally had to be identified separately
22 and the Industry said: News to us, in effect.

23 MR. CAMPBELL: I think, though, in order
24 for us to understand your position on those tables, I
25 am again going to ask Mr. Cosman if he is prepared to

1 give an undertaking to indicate where the Industry
2 would require changes to the instructions in those
3 tables because it seems to me it is only in that
4 circumstance that we can understand how the tables are
5 intending to be used.

6 Is that something you can do, Mr. Munro?

7 MR. COSMAN: First following my
8 instructions --

9 MR. CAMPBELL: It was a test. My
10 witnesses always fail on that test, they always blurt
11 out the answer and I have to remind them that lawyers
12 give undertakings, so I'm very impressed.

13 MR. FREIDIN: We look forward to seeing
14 that, Mr. Campbell.

15 MR. COSMAN: Madam Chair, just so there
16 is nothing unclear, these terms and conditions and the
17 planning evidence has been reviewed by the members of
18 the committees that were established by Industry to
19 deal with the various activities that my friend
20 referred to. It's not as if these have been done in a
21 vacuum.

22 I see no difficulty in making the
23 undertaking that Mr. Campbell is asking for with
24 respect to where the Industry would require changes in
25 the instructions to the completion of tables from the

1 Timber Management Planning Manual.

2 MR. CAMPBELL: Thank you, Mr. Cosman.

3 Q. In the introduction to your terms and
4 conditions, and I would refer you to page 11 of Exhibit
5 1271.

6 MR. COSMAN: Page, sorry?

7 MR. CAMPBELL: Page 11.

8 MR. COSMAN: Thank you.

9 MR. CAMPBELL: Q. In the fourth
10 paragraph down, just below the Roman numeral numbered
11 points, the paragraph reads:

12 "We strongly contend that the
13 integrated resource plan for timber
14 management as a part of the integrated
15 resource management planning system
16 should be made as direct and simple as
17 possible and propose that this be
18 accomplished by considerably reducing the
19 content of the current Timber Management
20 Planning Manual for Crown Land in
21 Ontario. The parts of the manual which
22 have been removed are included in the
23 integrated resource management system
24 components as part of the database which
25 remains in the management unit as public

1 information."

2 Now, I'm not sure I am clear as to what
3 you mean. I want to be sure I understand when you say
4 "reduce the content" of considerably reduce the content
5 of the Timber Management Planning Manual".

6 As I understand your planning scheme, if
7 there was a manual that said: Here is how the planning
8 scheme operated, it would not be considerably reduced
9 from the Timber Management Planning Manual, it would
10 simply offload out of those -- out of the plan itself
11 those aspects that are covered in the three appendices.

12 Is that a fair summary?

13 MR. MUNRO: A. That is correct.

14 Q. Now, if we could go then to the
15 Timber Management Planning Manual which is Exhibit 7,
16 it requires certain items by way of appendices and I
17 would refer you to Exhibit 109 -- page 109 of Exhibit 7
18 which lists the required appendices. It's called
19 Appendices and Supplementary Documentation.

20 Section 4.15.1 on page 109 indicates
21 that:

22 "The following items must be included
23 as appendices to the timber management
24 plan..."

25 I want to just run down the list on that

1 page and just have you indicate where each of these
2 items are covered in your planning process. The first
3 one is copies of Tables 41 to 47 from the report on
4 past operations for the three previous five-year terms.

5 Where is that covered in your planning
6 process, planning documentation?

7 I think whoever put the comparison of the
8 tables together for you did an excellent job in putting
9 it in its proper perspective and correct spot.

10 You can see that that is included in
11 Appendix 3 and I commend the person whoever put to
12 together. They have capsulated it very well.

13 Q. All right. And you would -- don't
14 blush. Do you see that as covering the three previous
15 five-year terms under your scheme?

16 A. If that's the requirement, yes.

17 Q. All right. So you agree with that
18 everything that's covered in that item would be covered
19 in your scheme?

20 A. Yes.

21 Q. All right. The second point, copies
22 of certain tables again for the -- and that's just for
23 the previous five-year term. Again, that's covered by
24 the tables that are incorporated in your planning
25 process?

1 A. Yes.

2 Q. Detailed MAD calculation for each
3 working group or forest unit. Would that be covered in
4 your documentation?

5 A. Yes.

6 Q. And where would we find that?

7 A. Appendix 2, Integrated Resource
8 Database.

9 Q. All right. The FRI composite maps
10 indicating areas eligible for allocation for depletion
11 and preliminary identification of areas of concern.

12 I take it -- would all of those be there
13 with the obvious modification that areas of concern, as
14 I understand your scheme, it would really be I guess
15 the index we talked about earlier today and the things
16 that went into deviation, no guideline and enhanced
17 planning process?

18 A. Yes, the index that we would
19 consider...

20 MR. FREIDIN: I'm sorry.

21 MR. MUNRO: The index that we said we
22 would consider.

23 MR. CAMPBELL: Q. I think you went a
24 little further than that, and if you are backing up I
25 want to know. I think you said had you no problem with

1 providing the index, you want to talk a little bit
2 about how it was done.

3 MR. MUNRO: A. That's right.

4 Q. Thank you. So with that adjustment
5 for the way you would treat your sort of different
6 approach to what MNR calls areas of concern, you see
7 all of those matters under that fourth item being
8 covered in your documentation?

9 A. That's correct.

10 Q. The fifth item is FRI composit maps
11 indicating areas eligible for allocation for renewal
12 and maintenance operation and a preliminary
13 identification of areas of concern.

14 That's all in your documentation?

15 A. Yes.

16 Q. FRI maps sheets are composites
17 indicating areas allocated for depletion, areas of
18 normal operations, modified operations and reserves and
19 those areas included in the declared surplus?

20 A. Yes, it's part of the plan.

21 MR. MARTEL: Part of what?

22 MR. MUNRO: Part of the plan itself.

23 MR. MARTEL: Fine, thank you.

24 MR. CAMPBELL: Q. A listing of stands
25 allocated for a depletion showing total area allocated

1 for normal operations, et cetera, et cetera?

2 MR. MUNRO: A. Again, that would be in
3 the plan.

4 Q. So all of that is covered?

5 A. Yes.

6 Q. A summary of the public consultation
7 process including information detailed in Section 2.6,
8 plan review of this manual?

9 A. Supplementary documentation.

10 Q. A description of the methodology of
11 for any operational surveys which have been conducted
12 to determine prescriptions or the relationship of
13 volume by species to working group of forest unit?

14 A. Usually, in my particular case,
15 that's included in the forest management agreement. I
16 guess in some cases it would be included as part of the
17 integrated resource database in describing the
18 methodology regarding inventories.

19 Q. Again, when you tender your Ts and Cs
20 in more detail for the September 30 filing date we can
21 expect this kind of thing to be reflected in it?

22 A. It is certainly something we are
23 going to look at.

24 Q. You have agreed the material is
25 there, the detail, whether it is simply incorporated by

1 reference in your Ts and Cs or set out in detail, is
2 the kind of thing you will look at?

3 A. Yes.

4 Q. Could you just indicate, with respect
5 to the seventh item, a listing of stands allocated for
6 deletion and so on, where is that in your plan
7 documentation?

8 A. Perhaps that would be an oversight.
9 We haven't included it and we would have to look at
10 that.

11 Q. You haven't included it yet in your
12 plan documentation?

13 A. We see that as forming part of the
14 plan and we just haven't listed it out. So there
15 should be another set of tables added to correct that.

16 Q. All right. For that seventh point
17 under 4.15.1?

18 A. Yes. In the plan there will be a
19 listing of all the tables -- all stands that have been
20 allocated for depletion.

21 Q. All right. Now, the note in that
22 item indicates that:

23 "The prescriptions indicated in the
24 stand listings may be by specific
25 prescriptions developed for each

1 individual stand or they may be
2 references to generic prescription as
3 included in the silvicultural groundrules
4 for normal or modified operations."

5 A. Our proposal adopts the groundrule
6 type approach.

7 Q. All right. So that it is not
8 possible from the plan to tie a specific prescription
9 to a specific stand in your approach?

10 A. Definitely not possible and I think
11 the collective experience of the panel would indicate
12 that it is not relevant or viable to even considering
13 doing that.

14 Q. All right. So that this kind of bar
15 chart thing that we saw in the first round of evidence
16 on the Red Lake Plan you say (a) you wouldn't do; and
17 (b), I guess basically if I read your evidence
18 correctly is impossible to do?

19 A. That's what we would agree to, yes,
20 in terms of you can do it, nothing is really impossible
21 to do, but what relevance would it have in a practical
22 sense is where we would differ.

23 If you want a stand listing, an
24 associated prescription anybody could do that. Whether
25 it is practical and of any value to a management

1 forester, whether that's from the Crown or the company
2 is, in our mind, quite questionable.

3 Q. We are going to return to that
4 question, but I just want to be clear what you are
5 proposing and what you aren't. You are not proposing
6 that it would be possible in the plan to go to a
7 particular stand and see the prescription associated
8 with that stand? That is not part of your proposal?

9 A. Definitely not.

10 Q. And then our understanding looking at
11 the balance of the appendices, which is the
12 supplementary documentation, is that the items listed
13 on page 110 of the Timber Management Manual are covered
14 in your planning and documentation?

15 A. Yes, it is covered in 4.15.2.

16 Q. Yes.

17 A. Yes, they would be included.

18 Q. I'm sorry, your voice trails off and
19 I can't hear you.

20 A. They would be included as part of the
21 supplementary documentation.

22 Q. All right.

23 MADAM CHAIR: Is this a good time for a
24 break, Mr. Campbell?

25 MR. CAMPBELL: Perfect.

1 MADAM CHAIR: All right. We will be back
2 in 20 minutes.

3 ---Recess taken at 2:45 p.m.

4 ---On resuming at 3:10 p.m.

5 MADAM CHAIR: Please be seated.

6 MR. CAMPBELL: Q. Mr. Innes, there is
7 one matter I want to deal with before going to some
8 discussion of normal operating areas.

9 In terms of the application of these
10 guidelines and how all of that is done, during the
11 course of our Panel 15 cross-examination and in our
12 terms and conditions we have suggested that a practice
13 that is adopted by the Ministry of the Environment in
14 various of its other activities be adopted here as well
15 and that is, that there be a certification by the plan
16 author or the appropriate person to the effect that the
17 plan is prepared in conformity with the various
18 guidelines manuals, et cetera, which are applicable to
19 the values found in the management unit, and that
20 deviations from those guidelines -- the certification
21 indicates that deviations from the guidelines are set
22 out as listed in the documentation.

23 That certification is found as Appendix
24 17, the Ministry of the Environment terms and
25 conditions which are behind Tab 2 of Exhibit 1270.

1 Having raised that concept in Panel 15
2 and in the terms and conditions, is that kind of
3 certification process agreeable to the Industry so that
4 we have something specific to rely on with respect to
5 the application of guidelines?

6 MR. INNES: A. Madam Chair, I believe it
7 was me that spoke yesterday about this type of
8 certification and we would be quite willing to consider
9 something of wording comparable to this as proposed by
10 MOE in Appendix 17 of their terms and conditions as a
11 term and condition we would include.

12 Q. But you see that type of
13 certification as being in conformity with the
14 guidelines so that the review agencies could rely on
15 the plans author's certification instead of having to
16 go back behind that all the time as something that
17 would be beneficial?

18 A. Yes, Madam Chair.

19 MADAM CHAIR: But the very nature of what
20 the Industry is proposing, the way you have described
21 it to the Board, is that you are making the plan author
22 more accountable than he or she is under the current
23 MNR regime.

24 MR. INNES: That's correct.

25 MADAM CHAIR: And so it's unlikely that

1 they wouldn't be well informed of everything that had
2 gone into the timber management plan. I think that's
3 your position.

4 MR. INNES: Yes, that's correct.

5 MADAM CHAIR: So the certification
6 couldn't make a difference one way or the other. You
7 are not saying you would object to go a certification.

8 MR. INNES: No. We are saying that we
9 would be in favour a certification as it sort of goes
10 along the same line that we are talking about in terms
11 of assuming greater responsibility and a more visible
12 profile on this.

13 MR. CAMPBELL: Perhaps just by way of
14 explanation, Madam Chair. This is a practice that is
15 adopted by the Ministry of the Environment in other
16 program areas, where, for instance, in the design of
17 water treatment plants and so on.

18 There is a reliance placed on the
19 professional certification rather than engagingrafts
20 of professional engineers to go through all the
21 drawings and make such all the bolts are the right
22 size, and so on. They say: Look, you want to be
23 accountable, give us the certification, we rely on the
24 certification. If you have blown it you are in
25 trouble, but if you want to accountable certify.

1 It's just a carry over of that approach
2 that we think is beneficial in these circumstances.

3 Q. All right. Mr. Innes, I want to turn
4 now to normal -- really normal operating areas. I
5 guess just some general questions. You would agree, I
6 take it, that normal operating areas are as much a part
7 of the environment as are areas with values, be they
8 AOCs, part of an enhanced planning process, et cetera?

9 MR. INNES: A. Yes, I would agree with
10 that.

11 Q. And normal operations have an effect
12 on that environment?

13 A. Yes.

14 Q. And different types of operations
15 will have different types of environmental effects?

16 A. Yes.

17 Q. To use an example, if you have got an
18 operation that involves a shortwood harvest or logging
19 method, that's a situation where delimbing occurs,
20 where the tree is cut, leaves material on site, versus
21 full-tree where the material -- the delimbing occurs at
22 a landing and all the limbs are in a concentrated area.
23 All of that has different environmental effects?

24 A. Yes.

25 Q. Now, you have indicated that with

1 respect to individuals who are concerned about a
2 specific spot on the map, that's your first category of
3 people in your discussion at page 16 and 17 of Exhibit
4 1269, I think you indicated to Mr. Hanna, you have
5 indicated again today that you expect in the course of
6 your planning process that if somebody comes up to you
7 and says: I am concerned about what's going to happen
8 right there, you are prepared to sit down and work with
9 them and make a commitment to what's going to happen
10 right there. Do I have a correct?

11 Have I summarized that correctly?

12 MR. MUNRO: A. Part of our proposal is
13 the plan author has to deal with those interested
14 individuals.

15 Q. And the plan author under your scheme
16 would be prepared to say: All right, you are concerned
17 about that point of land on that lake, I am prepared to
18 say right now when I am preparing my five-year plan
19 that here is what we will do there and here is what we
20 won't do there?

21 A. I would add that one proviso is that
22 there has to be a recognized value and that recognized
23 value is something that's done through MNR not between
24 the two parties negotiating.

25 Q. What if his recognized value is that

1 he is kind of fond of that point of land and doesn't
2 want the middle of it clearcut?

3 See, I understood your evidence to be
4 even at that stage, even if it's that general, you
5 would sit down and try and come to some agreement with
6 them and you are prepared, if you can do that, to
7 commit to a particular course of action on that
8 particular piece of geography?

9 A. Yes, providing it was reasonable.

10 Q. Sure. There will be cases where it
11 won't be possible to reach that agreement?

12 A. That's true.

13 MR. INNES: A. I'm a little concerned,
14 Madam Chair. We have a process for doing that, that we
15 would go about and I'm sure Mr. Campbell understands
16 that process.

17 I didn't hear him mention that at this
18 particular point in time, but to develop that
19 particular prescription for an individual site will, in
20 almost all cases that I can think of, require a site
21 visit to look at it with the individual which is why we
22 put a process together that you have to talk about it
23 generally at first contact, and if it goes to more
24 concern you go through the enhanced planning process to
25 get to the site visit, to get to a particular

1 prescription, et cetera.

2 Q. I don't argue that it is a process
3 and sometimes it will result in an inability to reach
4 some kind of understanding and sometimes it won't, I
5 understand all of that.

6 But the goal is, where it is at all
7 reasonable to do so, to reach some kind of agreement
8 and for that individual concerned you are prepared to
9 make a commitment as to what happens on a particular
10 piece of geography that that person is concerned about?

11 You are prepared to make that commitment
12 at the five-year planning level?

13 MR. MUNRO: A. Yes, I would agree with
14 that.

15 Q. And whether it's possible to reach
16 that agreement is a different question. You are
17 prepared to do it?

18 MR. INNES: A. Yes.

19 MR. COSMAN: Subject to the approval
20 process.

21 MR. CAMPBELL: Oh, yes, subject to -- I
22 mean, if the company plan author reached an agreement
23 with somebody and it was an entirely outrageous
24 solution to the problem, then it wouldn't get approved
25 is, I gather, what you are saying.

1 MR. COSMAN: Or someone else. A
2 neighbour might say: I don't like it for some reason.
3 There is a process to --

4 MR. CAMPBELL: Yes, I understand all of
5 that.

6 Q. I am just trying to identify that at
7 least at the individual concern level there is a
8 possibility for sort of seeing exactly what is going to
9 happen on a particular piece of geography. I think we
10 are agreed on that; are we not?

11 MR. MUNRO: A. Yes.

12 Q. All right. Now, I want to take you
13 back and read again your description of the second
14 group.

15 MR. COSMAN: 1269?

16 MR. CAMPBELL: 1269, page 17.

17 Q. "The second segment of the public
18 wants to be able to understand the
19 Technicalities and rationale of the
20 decisions being taken. These groups and
21 individuals are generally interested in
22 broad district, regional and provincial
23 issues. The information requested by
24 this public must be addressed by
25 providing background information relating

1 to resource program, objectives and
2 targets, as well as how those objectives
3 relate to a timber management plan being
4 produced."

5 Would you agree with me that this is a
6 critical objective to achieve for any timber planning
7 process if it is to achieve long-term credibility?

8 MR. INNES: A. Yes, I would agree with
9 that.

10 Q. And for the planning process to have
11 credibility it has to result in a plan that
12 communicates a clear understanding of what is proposed
13 for the five-year period?

14 A. Yes.

15 Q. Now, Mr. Innes, you have asserted in
16 your testimony that this clear understanding of what is
17 proposed for the the five-year period is what your
18 planning process is all about. Do you agree with that?

19 A. Yes, I believe that's correct.

20 Q. And in fact, I will you give the
21 transcript reference, I don't propose to turn it up,
22 but it is one of the ones I gave you yesterday.

23 At Volume 221 of the transcript, this can
24 be found in the area of pages 40096 to -98 during Ms.
25 Kleer's cross-examination, you stated that",

1 "At the five-year level, the person
2 reviewing the plan should be cognizant of
3 what's going to happen at what place, at
4 what point in time."

5 Have you take the opportunity to review
6 that reference I gave you yesterday?

7 A. I believe I have, Madam Chair, I'm
8 just searching for it here. I have page 40096, Mr.
9 Campbell.

10 Q. Yes. And if I read that testimony
11 correctly, what you were asserting there is that at the
12 five-year level it should be -- the person who is
13 looking at studying the plan should be able to become
14 cognizant of what's going to happen, what's going to
15 happen at what place, at what point in time and that
16 remains your view, I take it?

17 A. That is true, and that's not on
18 40096, it deals with native communities affected by a
19 particular activity. Is that the one?

20 Q. That's the context of the discussion,
21 but I took your assertion as being somewhat more
22 general than that, that in fact the objective of the
23 plan was that people would be cognizant of what's going
24 to happen, at what place, at what point in time?

25 A. Yes, that's our view.

1 Q. And, Mr. Suomu, turning to you, at
2 Volume 220, page 39781, you there spoke of the annual
3 work schedule and testified that it only takes approved
4 activities, activities which have already been approved
5 and schedules them for a particular year and you went
6 on to state that there shouldn't be any surprises in
7 terms of the work schedule.

8 Do you recall that testimony?

9 MR. SUOMU: A. Yes, in terms of what's
10 being presented to the public.

11 Q. All right. And it remains your
12 testimony that there shouldn't be any surprises in
13 terms of what is developed and what actually results in
14 the annual work schedule as between the five-year plan
15 and when the annual work schedules are implemented?

16 A. That was my testimony.

17 Q. And it remains your testimony now?

18 A. Yes.

19 Q. Now, I want to contrast that
20 philosophy against testimony that's on the record as to
21 what we know at the time of the five-year plan level,
22 at the time of the preparation of the five-year plan
23 for areas of normal operations.

24 I have got a number of references that I
25 want to make that we went through with you -- that I

1 gave to your counsel yesterday.

2 First, I want to remind of you Mr.
3 Hopkins' testimony, Ms. Seaborn's cross-examination,
4 Volume 196, page 34682. Mr. Hopkins there indicated
5 that:

6 "Over the first few rounds in
7 preparation of groundrules, the changes
8 between the time the groundrules were
9 prepared, what was done in the field were
10 so dramatic that there was no way that in
11 the five-year planning stage that we
12 could promise that we are going to
13 deliver a certain type of harvesting
14 system because of the changes that have
15 taken place and will probably continue to
16 take place in the future."

17 Does anybody on this panel disagree with
18 Mr. Hopkins' testimony in that respect?

19 (no response)

20 In this case I will take silence and side
21 to side head shaking as being no universally from the
22 panel.

23 MR. INNES: A. That's correct.

24 Q. I would then refer you to Mr. Roll's
25 testimony, Volume 196, page 34669. The question there

1 was, and it was under discussion was:

2 "How specific could someone be as to
3 the harvest method at the five-year
4 level?"

5 That is, at the time of the preparation
6 of the five-year plan, and Mr. Roll's testimony was:

7 "It's even difficult at the five-year
8 level to be as specific as pinning down
9 the harvest method as between eight foot
10 tree-length or full-tree."

11 Now, does anybody on the panel disagree
12 with Mr. Roll's testimony in that respect?

13 MR. MUNRO: A. No.

14 MR. FRY: A. No.

15 MR. SUOMU: A. No.

16 MR. INNES: A. No.

17 Q. And you've all conceded earlier that
18 there can be different environmental effects associated
19 with those different methods.

20 Now, I would like then to take you to
21 Volume 202, page 35813 and this is Mr. Freidin's
22 cross-examination of Mr. Waddell, and Mr. Freidin made
23 the point with Mr. Waddell that the choice of logging
24 method can change over night, at least that was Mr.
25 Waddell's testimony at that point.

1 Do any of you wish to correct Mr.
2 Waddell's testimony in that regard?

3 MR. MUNRO: A. No.

4 Q. Again, I will take that as a
5 universal no from the panel.

6 MR. FRY: A. I would say, Madam Chair,
7 that to change over night is not correct, but it can
8 change certainly in a very short period of the time as
9 we have witnessed with the move from tree-length
10 skidding to full-tree skidding.

11 Q. All right. I will record that
12 qualification from one member of the panel.

13 Now, I'd then take you to Volume 202,
14 page 35835, again it is Mr. Freidin's
15 cross-examination, this time of Mr. Ferguson. Mr.
16 Ferguson --

17 MR. MUNRO: Excuse me, Mr. Campbell, we
18 don't have that I don't think.

19 MR. CAMPBELL: 35835.

20 MR. INNES: No.

21 MR. COSMAN: The reference you gave us
22 was 35813 in Volume 202.

23 MR. CAMPBELL: Did I not give you the
24 35835?

25 MR. INNES: No, but we have the volume

1 here, Mr. Campbell. 35835?

2 MR. CAMPBELL: Yes.

3 Q. If you go at the bottom of the page--

4 MR. INNES: A. Yes.

5 Q. --Mr. Waddell says:

6 "I'm thinking possibly..." The
7 discussion is in terms of what the renewal treatment
8 will be, and he says:

9 "I'm thinking possibly of a situation
10 where your initial observations of the
11 site before the cut would imply that
12 perhaps a planning renewal technique was
13 in order following the harvest, as you
14 have a better picture of the site.
15 Perhaps seeding would be equally
16 effective and flexibility, in my opinion,
17 should be there to make that change."

18 MADAM CHAIR: Is that Mr. Ferguson or Mr.
19 Waddell?

20 MR. CAMPBELL: That's Mr. Ferguson. I'm
21 sorry if I attributed it to the wrong person. It is
22 Mr. Ferguson.

23 Q. Would anybody on this panel disagree
24 with Mr. Ferguson that, in fact, you may want to change
25 the renewal method even after you cut the site?

1 MR. INNES: A. May I have a moment to
2 read the transcript, please.

3 Q. Yes, by all means.

4 A. What was the question Mr. Campbell,
5 please.

6 Q. Does anybody on the panel disagree
7 with Mr. Ferguson's testimony about renewal method
8 changing once the timber is removed from the site?

9 MR. INNES: A. I would not disagree with
10 that provided that it remains within the confines of
11 the groundrules that are put together in silvicultural
12 prescriptions that outline the range of acceptable
13 harvesting and renewal practices for that site.

14 Q. Well, that's going to be the exact
15 point I am coming to, but insofar as Mr. Ferguson's
16 testimony there is no correction that you feel is
17 required to his testimony?

18 A. No, I don't agree with that. The way
19 I read this one page, Mr. Ferguson is talking that as a
20 general rule we can make sound silvicultural
21 prescriptions based on our knowledge and the general
22 knowledge of the site information, et cetera.

23 And what I believe he's saying is that
24 there may be a range of options in there which you will
25 settle upon the preferred option which may change from

1 the one year originally you thought about after you've
2 looked at the site being harvested, but we have to
3 recognize that we don't have that flexibility to do
4 that beyond the flexibility included in the
5 silvicultural groundrules which clearly specify what's
6 possible for that site.

7 Q. Well, just a minute. They don't
8 specify what's possible for that site. That site is
9 not listed as an indentified geographic site in the
10 groundrules; is it?

11 A. A site is a classification of the
12 general type of area, Madam Chair. It's not a stand
13 number, no.

14 Q. All right. I think we've -- is it
15 not fair to say that in terms of the groundrules, the
16 silvicultural groundrules that are set out in Table
17 4.11 with respect to renewal, for instance, very often
18 we see all of the possible types of renewal listed as
19 options for a particular site type?

20 A. No, I would not agree with that.

21 Q. Fine. Well, let's --

22 MR. COSMAN: The other witnesses shook
23 their heads, too.

24 MR. CAMPBELL: Q. I am going to try and
25 just stick to my simple point. My simple point --

1 let's not into a long argument about all of this.

2 My simple is, Mr. Ferguson testified that
3 the renewal option can change after the harvest. You
4 would agree with that?

5 MR. INNES: A. We would agree with that.

6 Q. And you would agree that different --
7 the implementation of different renewal options have
8 different environmental effects?

9 A. Yes.

10 Q. All right. Now, in the context of
11 your statement and Mr. Suomu's statement of being able
12 to tell at the five-year level what's going to happen
13 at what place, at what time in the annual work schedule
14 simply being a reiteration of that, it seems to me and
15 I would like to suggest to you that at the five-year
16 level for a given area allocated there is no certainty.

17 If I go to a map and say: Okay, you have
18 allocated this area, there is no particular certainly
19 as to the size or configuration of clearcuts and to the
20 extent that there is, you want the flexibility to
21 change it, is that correct, when you actually get to
22 operations?

23 A. The actual cut pattern on the ground
24 will not be laid out site by site at the time of the
25 five-year plan.

1 Q. Can you agree with my statement or
2 not? At the five-year level, the actual size or
3 configuration of clearcuts will not be specified -- not
4 normally be specified for a particular piece of
5 geography and to the extent that it is, even if it was,
6 what you have asked for in these proceedings is the
7 flexibility to change that when you actually come to
8 operate at the particular point in time when you go out on
9 the site?

10 A. It is a two-part question obviously,
11 Madam Chair. The first part is, I agree that there is
12 not specificity in terms of clearcut size and layout;
13 and the second part of the question I was having
14 trouble with because it began if there was.

15 Q. Even to the extent there may be in a
16 particular location, some plan author decides to put
17 something in about that, as I understand it, the
18 position is that you want the flexibility when you
19 actually go out to operate to change that in light of
20 what you actually find on the site?

21 A. That is correct.

22 Q. All right. Again at the five-year
23 plan level, to the extent that a harvest method is
24 specified, it can be changed over night; that is, you
25 again want the flexibility to change it when you are

1 out on the land about to do that particular operation?

2 A. I am going to have to ask for some
3 help from my colleagues, but my understanding is the
4 harvesting method is as laid out in the silvicultural
5 groundrules for that particular site classification.

6 Q. And it is most -- and to the extent
7 that it says shortwood, tree-length, full-length it can
8 and we have testimony that the harvest method can
9 change over night?

10 A. It may change between those three
11 options.

12 Q. Are there any other options?

13 A. Not that we are currently using.

14 Q. Right, thank you. Now, we have
15 testimony that we don't necessarily decide renewal
16 method until after the cut has taken place, we have
17 gone through that.

18 And with respect to tending, a lot of the
19 prescriptions simply say as required and there is no
20 firm prediction for any particular site as to whether
21 it will be done or even whether it will necessarily be
22 required; is that also fair?

23 A. That is correct.

24 Q. Now, Mr. Suomu and Mr. Innes, I want
25 to remind you again of your answer that at the

1 five-year level you should know what's going to happen
2 at what place, at what point in time and I don't want
3 to sort of mince around about this.

4 I just don't understand how in the face
5 of all of this flexibility you want, none of these site
6 descriptions being tied to any piece of geography and
7 all of these things can change once you actually get
8 out in the field, how you can suggest that anyone
9 should believe that in areas of normal operations you
10 can tell what's going to happen, at what place, at what
11 point in time and I put to you that you quite
12 explicitly cannot do that in areas of normal
13 operations. I would ask you to agree with that.

14 A. What we recognize is the necessity of
15 looking at the individual site before you can pin down
16 a specific operation, and we have recognized the
17 impossibility of looking at the entire five-year
18 operating plan area on the ground and making those
19 determinations six years in advance of when the
20 operations will actually occur.

21 So instead of doing that impossible task
22 to produce any meaningful result in terms of it being
23 impossible, we have provided an alternate whereby when
24 there are areas containing a value of concern or
25 somebody has a concern about a particular operation

1 that wants to know about a particular location, we are
2 prepared to address that in the manner which is brought
3 forward.

4 Q. Mr. Innes, I understand all of that
5 and I am trying hard not to interrupt you but, with
6 respect, it is simply not responsive to my question.

7 My question is: With respect to areas of
8 normal operations, isn't it fair to say in light of the
9 testimony before this Board that it is simply not
10 possible to know at the five-year level what's going to
11 happen, at what place, at what point in time?

12 You yourself have said you can't do it
13 until you go out on the site, so it's impossible to
14 reflect in the plan areas of normal operation, what's
15 going to happen, at what place, at what point in time?

16 A. No, that's not true in totality,
17 Madam Chair. What you have to do to the extent
18 possible - and I am being responsive, Mr. Campbell - is
19 to allow the public to understand where are the roads
20 going to be built, where are the areas going to be
21 harvested, what techniques are likely to happen in
22 these areas, and that allows them the opportunity to go
23 and ask if they have a concern for a specific location,
24 but that does tell you, I submit, Madam Chair, that you
25 are going to harvest in this area in year four of your

1 plan and the roads are going to be built in this area
2 in year three of your plan, and that is refined to the
3 degree that we consider it to be possible in giving
4 meaningful answers to those people who have a concern
5 about operations happening in normal areas.

6 Q. But, Mr. Innes, is it not fair for me
7 to say that with respect to details of clearcuts,
8 harvest method, renewal method, tending method, all of
9 these things which depending on what you choose can
10 have substantially different environmental effects and
11 substantially different regeneration success, that
12 looking at the plan documentation I can't tell what's
13 going to happen at what place, at what point in time?

14 A. If you are at that level of detail,
15 Madam Chair, that's quite correct.

16 Q. All right. Now, against that
17 background and given the broad range of options that
18 are normally included in the silvicultural groundrules,
19 the question that we keep struggling with is if - and
20 it sounds very odd from my mouth - is if you are
21 worried about documentation and effort that doesn't
22 really achieve anything, we don't really understand
23 what the point is of spending all the time labouring
24 over these silvicultural groundrules.

25 Why wouldn't you just take the

1 silviculture guides as an alternative, it is only one?
2 Why wouldn't you just treat the silviculture guides
3 like any other guide, you either do what is
4 contemplated by the guide or you document a deviation?

5 I don't understand. I am unable to see
6 any useful productive purpose of producing all of these
7 silvicultural groundrules, many of which we looked at
8 all the different plans that we looked at, cover every
9 particular options that's available for that site type
10 according to the silvicultural guides.

11 If ever I heard a definition of useless
12 work, it's simply repeating what's in the silvicultural
13 guides into the silvicultural groundrules that contains
14 all of the options that are available.

15 Now, again, I sort of have made a speech
16 and I will invite you to comment.

17 A. I was waiting for the question.

18 Q. The simple question that comes out of
19 all of this is, we don't understand why you put all
20 this effort into silviculture groundrules, they don't
21 seem to do anything for you.

22 They don't limit your options in any real
23 say that the silviculture guides don't already do, and
24 why not just treat them like deviation and exception
25 reporting from other guidelines? We really don't

1 understand.

2 MR. MUNRO: A. In my view, the
3 groundrules that are established for a given management
4 unit do reflect the uniqueness of that management unit
5 and what they essentially do is lay out in priority
6 what type of regeneration options would be preferred.

7 Some of the groundrules that are
8 applicable to my particular area are not necessarily
9 applicable to Mr. Fry's area and we fine tune the
10 silvicultural guidelines for a specific management unit
11 and they may seem broad in some respects in that all
12 the options may be included, but in most cases that is
13 a priority listing and you go from A to B to C and we
14 find it on those lines.

15 The northwest region is somewhat unique
16 in the type of operations and the prescriptions that
17 can used than the northern region. So it would be
18 inappropriate to have a guideline that applied to all
19 the area of the undertaking without fine tuning it a
20 bit, and that's our opinion anyway.

21 Q. Mr. Munro, I understand that, but we
22 have had considerable resistance in cross-examinations
23 at various points in these proceedings to the concept
24 that the first item on the list is your best prediction
25 of what's going to happen and that the actual

1 instruction on the table that you set out the
2 circumstances under which you move to the next most
3 desirable option and then to the third most desirable
4 option is something that's actually feasible.

5 It has been suggested to us that that's
6 not something that is done, first of all, and I think
7 I'd go so far as to say that the general tone that we
8 are left with is that we seem to get mixed messages
9 about whether it's even doable.

10 If what you said was correct, then the
11 author could say: Look, our best prediction of what we
12 are going to do here is this. I mean, that would be
13 extraordinary valuable to be able to say that. I think
14 it's the kind of thing that we hoped when we first saw
15 the bar charts on the Red Lake plan could be done, but
16 we were told basically it is impossible.

17 But if it was done, you can say: All
18 right, this is our best prediction and everybody who
19 reads that understands it was a prediction and
20 predictions by nature are sometimes going to be wrong,
21 but that to us is not what's happening when we look at
22 the planning and look at Table 41, your assertion that
23 that is in fact what's happening because it has a lot
24 to do with predicting environmental effects and forest
25 regeneration success out on the land base.

1 A. Madam Chair, Mr. Martel, it becomes a
2 fundamental problem of not having enough information
3 and what we've attempted to do in the groundrules is we
4 attempt to specify general sites where prescriptions
5 will be carried out.

6 If we had an inventory that told us
7 everywhere that we had silty clay in the Pakwash
8 Forest, we can define that to a much greater detail,
9 over time we accumulate that information, but the
10 problem is we just don't have it now and what we are
11 trying to do is provide professional managers' needs
12 with some broad types and allowing them to go and
13 manage to the best of their ability given a number of
14 things.

15 One is, they don't have a detailed
16 inventory of what's under that vegetation layer and
17 until you basically cut it you are not totally positive
18 on what your prescription is going to be; secondly,
19 there is a lot of economic considerations that you have
20 to operate within; thirdly, there is some other
21 physical constraints that you have to operate in.

22 In reality, it would be in my mind
23 mismanagement to attempt to do a lot of that work ahead
24 of time since it varies so much in terms of, if you are
25 dealing with a fair amount of topographic relief you

1 can go from a specific site with a totally different
2 prescription than an area contained within that same
3 stand. So we might go from rocky upland to a middle
4 ground with kind of fertile ground with deep soils to
5 to a lowland area.

6 All of those site types might be included
7 within one individual stand and the problem that you
8 have is when you broad base it and leave the public
9 with the impression that you do in fact know the actual
10 prescription for that general area. You are actually
11 misleading them to a certain extent because when you
12 get out there in the field that could be there and
13 possibly even five different prescriptions applied to a
14 specific stand.

15 This is the inherent problem that we are
16 dealing with. Mother Nature did not necessarily plan
17 in an appropriate fashion and what's there today is not
18 necessarily what's going to be there tomorrow. So we
19 need some flexibility in order to go out and, in my
20 mind, practice good forest management.

21 Q. Mr. Munro, accepting all of that, we
22 see examples after example of Table 4.1 which basically
23 don't do much more than summarize the management
24 parameters that are set out in the guides, they don't
25 contain options that are very specific, they are widely

1 comparable and all done differently all across the area
2 of the undertaking.

3 I guess the question is, rather than
4 putting all of the effort into the groundrules and then
5 saying as well, because we call all that flexibility,
6 might it not -- one of the other things that we have
7 contemplated is would it not be as well to take a
8 simpler approach, use the silvicultural guidelines, any
9 other guides and put that effort into making sure that
10 you track the results of actually what you did and the
11 success of a particular prescription in achieving
12 forest renewal objectives?

13 I think we have testimony, for instance,
14 from the hearing that it is very difficult to tell
15 what's happened on a particular site even in a short
16 period of time ago, and I would have thought that if
17 little more effort went into -- instead of writing out
18 those broad groundrules, into making sure that we can
19 track over a longer period of time what prescription
20 combinations work and what don't in producing the kind
21 of trees you are looking for that that might be a
22 substantially better use of that effort.

23 A. I can respond to that, Madam Chair
24 and Mr. Martel. I think Mr. Campbell has a valid point
25 and one that's quite worthy of consideration.

1 One has to realize and, I'm sure the
2 Board does, the historical evolution of silvicultural
3 groundrules. I am going to tie very quickly three
4 things together which give some merit to Mr. Campbell's
5 proposal here.

6 No. 1 is, historically silvicultural
7 groundrules were brought about for two reasons; one is
8 to have an agreement between Industry foresters under
9 FMAs and Crown foresters responsible for the
10 administration of the FMAs, what the appropriate
11 silvicultural and harvesting techniques would be for
12 that site.

13 So you remove one area of contention and
14 say: All right, these techniques to the best of our
15 knowledge work on that area. We are going to agree you
16 don't separate outside these because the intent is you
17 get the site harvested and regenerated in a proper
18 manner without site management and regeneration.
19 That's point No. 1.

20 Point 2 is, the FMAs are a contractual
21 agreement and as a result there needed to be some sort
22 of contractual understanding for compensation from MNR
23 to the Industry as per the agreement in such a way that
24 there would not be continual battle over should we
25 approve this treatment, should we pay for this

1 treatment, should we do that. So the groundrules were
2 a mechanism to straighten out our contractual agreement
3 in a way which could be followed through with undue
4 legal or procedural tangling, shall we say.

5 Now, if I can move on to the next point.
6 At the time the silvicultural groundrules were first
7 developed in the FMAs there was no site classification
8 system such as FEC and, as a result, it was very
9 difficult to find a way to describe what was going to
10 happen on a site and an attempt was made in the
11 groundrules to try and describe these in a fairly
12 precise manner, as precise as language, geography, soil
13 will allow you to do. So it was an attempt at looking
14 at locations specific rather than being extremely broad
15 brushed.

16 The third point is that there was no
17 geographic system available at the time and, therefore,
18 it was very difficult to link treatment to site to
19 results and now it is getting closer to having that
20 ability to do that.

21 So with those three changes, and those
22 are big changes from the time the FMAs first started 10
23 or 11 years ago, we are now at a point where perhaps
24 this should all be revisited in a fashion perhaps as
25 Mr. Campbell has suggested, to be able to take

1 silvicultural treatments within the range of the
2 manuals, guidelines and to be able to concentrate
3 efforts on linking those to results.

4 Q. All right. I want to turn to a much
5 more mundane question and that is, how the planning
6 process that you propose to put in place will attempt
7 to deal with silvicultural concerns, and the only way I
8 could really think of coming at this was to try and
9 give you a specific example.

10 Let's assume a responsible group that
11 falls within your second category of people set out on
12 page 17, a continuous history of responsible
13 participation in forestry concerns, say they raise in
14 the course of a planning exercise a concern about
15 nutrient depletion and they came to you and suggested:
16 We are very concerned about this matter, there appears
17 to us to be conflict in scientific information on it or
18 maybe stronger, it appears to us that there is in fact
19 on a scientific basis a concern about nutrient
20 depletion such that we would ask your plan to be
21 prepared on the basis of no full-tree harvesting on
22 site class 3.

23 Now, how would your planning process deal
24 with that kind of a concern being raised by that second
25 group that you so clearly say must be addressed?

1 MR. MUNRO: Go first.

2 MR. INNES: A. We have provided an
3 avenue we think, Madam Chair and Mr. Martel, to deal
4 with that type of situation, as I think it is a valid
5 type of concern that could be raised.

6 That is a technical question and as a
7 result it should probably impact upon the technical
8 guidelines and manuals for the management of a
9 particular species on a particular site, and I will
10 assume from Mr. Campbell's example it would not be
11 universal across all the site but might be more
12 specific, say, black spruce on site class 3, for
13 example, and there would be a manual dealing with
14 silvicultural practices for black spruce and how you
15 would go about dealing with that.

16 Through our way of handling this, this
17 concern would be brought forward to the plan author or
18 to the district manager at a local level and it would
19 be raised as a concern which would go to the -- first
20 of all, the local technical committee in terms of the
21 experts dealing with this and who may or may not have
22 answers and who may or may not refer this to a
23 provincial technical committee and it could also go
24 directly, if the district manager felt it was
25 appropriate, to the provincial technical committee to

1 ask them to review the appropriateness of this concern
2 and whether or not they needed to structure an
3 investigation into this, a scientific investigation
4 into it, whether field trials had to be implemented and
5 what had to happen to resolve this problem.

6 The solution to that could come out,
7 would go to the provincial policy committee as to
8 whether it needed to go for public input or not and an
9 answer come back down again.

10 Q. All right. In the meantime you have
11 got a plan being prepared and all of that process that
12 you've described, which could involve field trials and
13 so on, could be a very lengthy process, you would
14 agree?

15 A. It could be.

16 Q. All right. Let's take the scenario
17 where this thing does take a little investigation and
18 isn't going to be done within the time frame that you
19 specified for plan preparation.

20 How do you see it working through the
21 development of the plan for the next five years if that
22 kind of concern is raised in a serious and responsible
23 way?

24 A. I don't see there being any instant
25 answers in the scientific world except by happenstance

1 and due process must take its place to find appropriate
2 answers.

3 What could happen if the person had a
4 serious concern about this and was not content with the
5 answer that the technical committee had taken it under
6 advisement and was going to do something about it, but
7 the answer would take whatever length of time it would
8 take to provide that, the obvious answer is that the
9 persons has right to go to bump-up and to ask the
10 Minister of the Environment to conduct an individual
11 assessment on this or do whatever the Minister of the
12 Environment is in power to do in this particular case.

13 Q. Or it is the kind of circumstance
14 where the Industry can say in the particular
15 circumstances of this unit: We are prepared to live
16 with that kind of limitation. That surely must be at
17 least a possible outcome?

18 MR. MUNRO: A. And that's why the
19 enhanced planning process is in place.

20 Q. So you would just see it flowing
21 through the enhanced planning process. Like anything
22 else, it would a horse of a different colour but it
23 would go through the same process and may or may not in
24 the end lead to a bump-up request?

25 A. That's correct.

1 Q. Mr. Innes, do you agree with that?

2 MR. INNES: A. That's correct, yes.

3 By the way, Madam Chair, I would like to
4 make it clear that here we are talking about a planning
5 process that deals with all the management units. We
6 keep using the Industry, but this is our proposal for
7 the planning process which is ubiquitous because in a
8 great number of cases it would be the Ministry employee
9 writing the plan.

10 Q. I'm sorry. I'm not sure if I've
11 missed anything, I apologize.

12 MR. COSMAN: Carry right on. Mr. Innes
13 made the point that the planning process wouldn't apply
14 to Industry only, it would apply general to others.
15 That's all.

16 MR. CAMPBELL: Q. To come back to a
17 point that I raised with you before and to which you
18 gave a most eloquent answer, this is exactly the kind
19 of situation where it becomes important over something
20 other than a five-year time frame to track what you
21 actually did and what the actual results are.

22 This is where monitoring, feedback, all
23 of those things need to happen so that you can start to
24 learn about some of these things that take a little
25 longer team to develop; is that fair?

1 MR. INNES: A. That's correct.

2 Q. What's the Industry's assessment of
3 the progress being made towards actually tracking over
4 a rotation-type length the kinds of prescriptions that
5 are producing terrific results for you on a site type
6 and the kinds of prescriptions that you are running
7 into problems with?

8 I mean, everything isn't always rosy, I
9 assume. I don't have a sense of how well developed
10 that -- you talk about going in that direction, is this
11 something that we can only look forward to in the
12 future? What steps, in the Industry's experience, are
13 being taken on your units to actually ensure that?

14 A. I can shed some light on that, Madam
15 Chair, from my own company's experience. For example,
16 although it is not required, we are putting in
17 permanent sample plots, as have some of other companies
18 done over time to track stand development over time on
19 certain sites, certain techniques with certain species,
20 so understand the way the forest develops as a result
21 of that practice.

22 There are some excellent examples out
23 there; for example, Spruce Falls has permanent sample
24 plots going back into the 30s, I believe American
25 (inaudible). Mr. Friday, has that type of situation I

1 believe that you've worked on personally.

2 There are other ones across the country
3 that can be spoken of where you are trying to initiate
4 something that will allow you to track things over
5 time.

6 MR. YOUNG: A. I can also offer. Our
7 company has initiated a silvicultural information
8 system, a computerized silvicultural informing system
9 and one of the goals of that computerized system is to
10 be able to really track the progress of what's working
11 and what's not working.

12 So there is some work towards that to
13 determine what prescriptions were undertaken actually
14 produced the best results.

15 MR. MUNRO: A. Our company has had
16 permanent sample plots in place since 1958 and we are
17 still putting in permanent sample plots in our new
18 plantations so that we can monitor some of the things
19 that Mr. Campbell is speaking to.

20 It's absolutely essential that we do
21 monitor some of that stuff so that we ensure that we do
22 have a continuous monitoring of wood supply.

23 Q. I want to take you back to one of the
24 things that's covered in the appendices. Wouldn't a
25 stand -- I'm very simple minded on these things.

1 Wouldn't a stand listing that in an
2 organized way simply records the silviculture package
3 as implemented on a stand-by-stand basis be a good
4 start towards that kind of database and feedback loop?

5 MR. MUNRO: A. Every forester that
6 graduates out of university and finds employment thinks
7 that that's the way to do things. I think, Mr.
8 Campbell --

9 Q. Well, I'm glad I'm at least out of
10 the course.

11 A. I think Mr. Kennedy led some evidence
12 in Panel 15 indicating that he in fact was a young
13 forester at one time and did attempt to do that for a
14 period, I believe he said three to four years and I can
15 contest he did attempt to do that, I was with him at
16 that time.

17 And now that we are mature foresters we
18 can say that it really was a worthless exercise in that
19 you really have to focus in on site types using, to the
20 best of your ability, the information that you have
21 available, also alluding to some of the things that Mr.
22 Innes mentioned, the FEC classification, trying to
23 refine that to do exactly what those things are that
24 Mr. Campbell has indicated that he would like to see
25 done.

1 A stand is just a point in time, it
2 doesn't represent anything other than somebody has
3 classified it as to their interpretation at that
4 specific point in time of what the upper vegetation
5 type is. That's all it is.

6 Q. Mr. Munro, coming back to my sense of
7 sort of trying to get some more of this kind of
8 feedback, what you are saying is that what you need to
9 tie the prescriptions to is a site type or specific
10 site characteristics and then you can start to say:
11 Now, if I got this site characteristic and if I do this
12 I can -- that's what you would track through to find
13 out whether you are achieving your success and
14 objectives.

15 That's really the modification that you
16 are making to my suggestion?

17 A. With the proviso, as Mr. Innes
18 indicated, there are some tools out there that are just
19 coming on line now, the FEC being one which is a
20 classification type, but to date there has been no
21 operational typing done with that system and the GIS
22 world to the forestry community anyway is just opening
23 up and there is some opportunity to do some more
24 advanced things.

25 We haven't been doing them. We look

1 forward to trying to do those things and we are
2 encouraged by what we see out there now. There might
3 be the opportunity to do more in terms of...

4 Q. If I can take you back to one
5 question before then in my series in all of this.

6 Would you agree with me that as opposed
7 to these putting -- well, I guess Mr. Innes in some
8 effect has agreed with it, it is at least worth
9 considering taking this effort that we are putting into
10 the silviculture groundrules, running those guidelines
11 in the way we run the other guidelines and transferring
12 that effort into being better at closing that feedback
13 loop.

14 I take it that would be a productive use
15 of resources?

16 MR. INNES: A. We said it will be worthy
17 of consideration, Madam Chair, and it has to be done,
18 if we are going to do it - which is why I asked in what
19 great detail - at two different levels.

20 I am sure the Board doesn't want to hear
21 a big debate on this. The two different levels are on
22 a provincial basis where you have enough geographic
23 dispersion constructed in a scientifically,
24 statistically defensible way that you produce results
25 which have some degree of credibility and validity over

1 time.

2 The second one -- the second level is
3 locally with what you were hearing around here which
4 act more as local checkpoints as to how things are
5 going in terms of how you anticipate it going. It's a
6 little less scientific and a little less dispersed
7 geographically and by site type.

8 Q. All right. But it's fair to say that
9 given the time frames that we are dealing with here
10 that are much more rotation age than tomorrow, the
11 sooner we get started the better off we will be?

12 A. Yes.

13 Q. I want to turn to your planning
14 process now and I guess really what I'm talking about
15 is circumstances where the environmental analysis
16 called up by your enhanced planning process is
17 required.

18 There are some circumstances I would just
19 like to get a sense of whether you see these would --
20 whether these would result in your environmental
21 analysis being documented.

22 The first one I would like to put to you
23 is, where you have a conflict between two guidelines,
24 you had two values overlapping in a geographic area,
25 guideline A said do this, guideline B said do that and

1 there was a conflict between those two guidelines.

2 That perhaps is a slightly
3 over-simplified circumstance, but in that kind of
4 circumstance would that result in an environmental
5 analysis to try and work out the conflict between the
6 provisions of those two guidelines?

7 MR. MUNRO: A. Madam Chair, I would say
8 it would be highly potential that it would simply
9 because it might mean that one guideline would have to
10 be deviated from. So yes, that would occur.

11 Q. All right. Now, the next
12 circumstance I would like to ask you the same question
13 about is, there are -- I guess there is a particular
14 circumstance, there must be others, but the one that I
15 can give you an example of, there are examples where
16 following the guidelines you know will produce some
17 sort of conflict, and the example I have in mind is
18 that under the tourism guidelines gating is an option,
19 it is identified as a less desirable option, but that
20 is a circumstance where you can say: We followed the
21 guideline, gating is an option considered in the
22 guideline, but you know immediately as you do gating,
23 that that produces a conflict with the local community
24 that might want -- that will want to use the road. I
25 mean, this is a well-known northern conflict situation.

1 Where you are contemplating gating a
2 road, is that a circumstance that you would
3 automatically do an environmental analysis that was
4 documented to support that use restriction?

5 A. Madam Chair and Mr. Martel, we have
6 several cases in the northwest where we have a very
7 high level of tourist operations that gating is a
8 common practice and what we have done, and I would
9 suggest it would be appropriate in this situation, is
10 we make sure that it is identified on the map, that the
11 the road will be -- that there is a proposal that the
12 road could be gated and we make sure that anybody that
13 comes to our information centres knows about that well
14 in advance.

15 In some cases, there has been no
16 objections to a particular road; in some cases
17 individuals have expressed a concern. By sitting down,
18 in my particular case, with the tourist operator and
19 the local individual that had the concern and a company
20 rep, there was a better understanding developed and
21 there was a shrinkening, if you can put it that way, of
22 the period of time that it would be actually closed.
23 So it would be from the May longweekend to mid August
24 where we had planned to do ours.

25 So I don't think we would automatically

1 go and start look at alternatives. We would certainly
2 ensure that it is highlighted and then the enhanced
3 planning process would automatically kick into place
4 when an individual raised a concern.

5 Q. So that if someone came to the
6 information centre and objected to a gate, then your
7 enhanced planning process kicks in, but I guess I am a
8 little more concerned given the nature of generally the
9 objection to gating that lots of people who may never
10 turn up at your information centre may well be pretty
11 ticked off once they realize they've got a road out
12 there that they can't use.

13 It seems to me that's the kind of a
14 circumstance where you might consider automatically
15 doing an environmental analysis with alternatives
16 including an alternative -- including requiring
17 yourself to take a hard look at an alternative that
18 wouldn't require gating simply by road design.

19 A. We see the local advisory committees
20 and the regional committees as playing that role, as
21 providing some advice, saying: Look, we think that's
22 going to create a lot of problems. We know they would
23 provide advice to the plan author and district manager
24 since the gating has to be approved by the district
25 manager.

1 It cannot be simply a negotiated
2 arrangement between the plan author, the tourist
3 operator. The district manager has to approve it. The
4 district manager would take the the advice that he
5 receives from the advisory committees and it may be in
6 some cases he would ask us or the plan author, whether
7 it's company or Crown, to look at some alternatives.

8 Q. But the bottom line of all of that, I
9 haven't heard that you would agree that you should
10 automatically look at alternatives and do some kind of
11 analysis under your enhanced process to try and avoid
12 that known potential for conflict?

13 A. I don't think that would be
14 particularly warranted in doing that at this time.

15 Q. Why not?

16 A. Because we have had several instances
17 where we have actually planned operations and there has
18 been no objection to road closures. And even though
19 local people came in, once it was explained to them
20 about why it was closed and how that helped the tourist
21 industry out they had no objections.

22 Q. At any time during the gating period
23 by anyone?

24 A. We have roads that we have closed in
25 our limit that no one has expressed any concern about.

1 Q. You want the opportunity, as I
2 understand it, to allow that circumstance to develop as
3 opposed to considering it at a planning level?

4 A. I think it would be warranted to do
5 that, yes.

6 MR. SUOMU: A. If I might add. We had
7 discussed this particular instance and this could be a
8 good vehicle or function of the regional committee in
9 terms of regional tourism plans.

10 If, in fact, there was a plan for tourism
11 to maintain remote tourism facilities, then that would
12 be identified up front and part of the strategy might
13 be road closure as an option. So it might be
14 identified prior to the timber management plan itself.

15 Q. Mr. Suomu, I realize all of that. I
16 am talking about at the implementation level whereby
17 looking at alternatives it is possible, is it not, to
18 do road design, perhaps at some greater expense,
19 perhaps not, that by the mere design of the road avoids
20 the gate and achieves the objective. That is at least
21 possible?

22 A. Yes, it's possible.

23 Q. All I'm suggesting to you is, where
24 you have got a gate -- where you know you are going to
25 have to put up a gate and where it's so clear that

1 there is a potential for conflict with gating, as there
2 is throughout the north, that isn't it worthwhile to at
3 least take a look at that kind of alternative in your
4 planning in a formal way that you can say: Look, we
5 took a look at this and decided for these reasons at
6 the end of the day that denying people access to this
7 publicly paid for road was the right thing to do?

8 MR. MUNRO: A. I think you can be
9 assured that if advisory committees at both levels say:
10 You are going to have a problem, you better look at
11 alternatives, it would be in the plan author's best
12 interest to work with the individual; i.e., the tourist
13 operator effected, and try and come up with some
14 alternatives that might alleviate that concern.

15 Q. I guess my point is, why not just do
16 it in the first instance?

17 A. Because it's not warranted in all
18 instances. I think the advisory committee and the
19 district manager and the local MNR people and the local
20 company staff know those instances where there is a
21 very high potential that there is going to be some
22 conflict.

23 Q. Mr. Young?

24 MR. YOUNG: A. If I could add.
25 Specifically for access roads and in many cases the

1 gating issue is on primary access road, we have given
2 evidence that we do provide a consideration analysis of
3 alternative corridors. So there is alternatives
4 provided for in the planning stage up to the draft
5 plan.

6 The point you made is the environmental
7 analysis stage. As Mr. Munro pointed out, would kick
8 in when the concern is raised and would go to the
9 enhanced planning process. So we do do a consideration
10 analysis of alternative corridors and I could see
11 gating coming into that because we have to provide an
12 assessment of how values will be accommodated, and in
13 this case the outpost tourism camp would be value and
14 we would have to address how that is accomodated,
15 and gating may be one...

16 Q. And, similarly, the use of that road
17 is a value as well?

18 A. Yes. There is use strategies
19 developed for those roads and gating could be part of
20 the use strategy.

21 Q. All right. Now, one of the
22 objectives of your planning process is, as you have
23 made clear in your testimony, to meet the requirements
24 of the Environmental Assessment Act; is that correct,
25 Mr. Young?

1 A. Mm-hmm.

2 Q. Is that yes?

3 A. Yes.

4 Q. And Mr. Cosman has advised that he
5 has advised the panel on the requirements of the
6 Environmental Assessment Act. I think that can be
7 found at page 40267.

8 Against that background, you would agree,
9 I take it, that Section 5(3) of the Environmental
10 Assessment Act requires you to consider alternatives?

11 A. Could I check that section just to
12 refresh my memory?

13 Q. Yes.

14 A. The reference, Mr. Campbell, was??

15 Q. Section 5(3).

16 MR. MUNRO: You are talking the Act now?

17 MR. CAMPBELL: I am talking the
18 Environmental Assessment Act.

19 MR. YOUNG: No, I don't have the Act.
20 Yes, I believe part of the environmental assessment
21 procedures is identification of alternatives.

22 MR. CAMPBELL: Q. And that's a statutory
23 requirement?

24 MR. YOUNG: A. Yes.

25 Q. Now, as I understand it, in your

1 discussion -- from your discussion with Mr. Freidin
2 yesterday in particular, when it comes to secondary
3 roads you don't want to document the rationale for the
4 choice of secondary road alternatives, you simply want
5 to go forward and say: Here is what we propose to do.

6 Have I summarized that fairly? That
7 seemed to me to be the bottom line.

8 A. No, where secondary roads --

9 Q. I'm talking about outside this little
10 crossing of an identified value.

11 MR. COSMAN: It's a big crossing.

12 MR. CAMPBELL: As big or small as you
13 want it.

14 MR. YOUNG: That is evidence that we
15 presented. There would be...

16 MR. CAMPBELL: Q. You simply want to
17 record where you propose to put that road except you
18 want to look at alternatives if that -- within the area
19 of value?

20 MR. YOUNG: A. Containing a recognized
21 value for secondary roads specifically, yes.

22 Q. All right. One of the -- Mr. Freidin
23 has dealt with this extensively.

24 One of the examples that you gave me or
25 gave Mr. Freidin that rather concerned me was you gave

1 an example: Well, we will actually consider
2 alternatives for secondary roads, we just don't want to
3 document them. We are going to record the decision and
4 that decision can be, for instance, because we have sat
5 down with the tourist operator, made a decision on
6 where the road is going with that tourist operator and
7 we are simply going to record that.

8 Now, as I understand it, you said you
9 would record the fact of the discussion on the
10 agreement, but doesn't that really, in effect,
11 eliminate any real possibility for the consideration of
12 alternatives of the plan author, the tourist operator
13 at that time?

14 They are pretty committed to that
15 agreement that they have reached. They may have had a
16 few testy moments in coming to that agreement and they
17 are set. Doesn't that really shortchange the planning
18 process to do that?

19 A. I want to break that question up. We
20 do provide documentation of secondary roads and we are
21 suggesting on our maps of where that road would be
22 located. I just wanted to make sure that that's clear,
23 that we will document where the secondary road will be.

24 Q. Sure. You will say: We've made a
25 decision, it is going to be here.

1 A. And that's the preferred location.

2 And as I stated with Mr. Freidin, there may be an -- in
3 all likelihood there was a lot of discussions into the
4 road, the case I gave with the tourist outfitter.

5 We would document the location and I
6 guess it's -- there is two mechanisms there. If there
7 is still a concern raised by anybody, the enhanced
8 planning process kicks in with all the analysis that we
9 outlined, and I won't go into that, and as well the
10 Ministry of Natural Resources still has final approval
11 of that load road location. So there's two mechanisms
12 there.

13 If there's a concern, it's dealt with
14 through the enhanced planning process and the Ministry
15 still has ultimate approval authority.

16 Q. But, Mr. Young, yesterday in your
17 conversation with Mr. Freidin you made it quite clear
18 that in the course of coming to some decision about
19 where to put the road - I mean, this is only common
20 sense - you will inevitably look at alternatives, you
21 will consider them. Wasn't that your testimony?

22 A. Yes.

23 Q. Why not? What's so special about
24 secondary roads that nobody should be allowed to see
25 the consideration of alternatives in that particular

1 circumstance?

2 A. I gave some testimony yesterday, in
3 many cases secondary roads are within the area of
4 operations and in many cases those secondary roads
5 within the proposed operations are planned looking at
6 the values, looking at location, ground conditions. So
7 there are alternatives looked at. There is no doubt
8 about that.

9 The road through there. Obviously
10 somebody had to look at a set of aerial photos and
11 determine, can I go this way or this way. They look at
12 the maps and there is a lake there, I can't go there.
13 So there are alternatives looked at. You can't build a
14 road anywhere.

15 Q. So they are looking at alternatives,
16 as I understand your evidence?

17 A. In the process of developing the
18 preferred alternative that we show in the draft plan,
19 yes.

20 Q. You are looking at alternatives, you
21 would agree that different alternatives can have
22 substantially different environmental effects?

23 A. Yes.

24 Q. And you would agree that they may be
25 of more or less interest to people who might want to

1 use them if they are not gated depending on where they
2 go. There is a use consideration for that road beyond
3 timber that may come into play as choosing between
4 alternatives?

5 A. Yes, and that's probably a key point,
6 is that in many cases use management strategies can be
7 developed for secondary roads which adequately address
8 any concerns there would be.

9 So that's a very key point, that we feel
10 that the use management strategies for secondary roads
11 can address some of those concerns.

12 Q. Sure. And in all those cases,
13 environmental effects, use management strategies,
14 accessing public resources, paid for by public funds,
15 all of these things you are making -- the whole point
16 is that you are making a series of choices, each with
17 its own different implications; is that not correct?

18 A. I can't disagree. Any decision you
19 made, regardless of timber management, there's choices
20 to make and --

21 Q. That's my exact point. And isn't the
22 purpose -- would you agree that the whole purpose of
23 requiring analysis of alternatives is so that those
24 choices get traded off in an explicit and
25 understandable and rationale way, not just to the plan

1 author and the tourist who sit down and have a beer and
2 settle the matter?

3 A. I think the mechanism that we are
4 putting forward where the plan author is required to
5 deal one on one or -- you know, the technical experts
6 from the Ministry will probably in all likelihood be
7 there, deal with those concerns and address those
8 concerns one on one in the formulation of that
9 preferred alternative for secondary roads.

10 As well, there is dialogue, Madam Chair
11 and Mr. March, with the local citizens' advisory
12 committee.

13 MR. INNES: A. I will try this from a
14 different direction, Madam Chair, if I may; that is,
15 where there are values, we recognize the values and do
16 our utmost to take care of those through whatever
17 guidelines are appropriate for that and that's very
18 clear.

19 Where there are no values identified, as
20 Mr. Young has testified, these are mainly harvesting
21 operation where secondary roads go and we rely upon the
22 expertise of our technical experts who review the plan,
23 who make input to it to let us know if that's an
24 inappropriate place for a road to go because in the way
25 we look at it it makes virtually no difference as to

1 where it goes in an area which has been approved for
2 harvesting and, in fact, has no values identified to
3 it.

4 Q. But that's your judgment that it
5 makes no difference. I have got agreement from Mr.
6 Young that the use management of that road -- the use
7 of that road is itself a value.

8 If you say, if you eliminate anything but
9 an area with an identified value of having any values
10 and it makes no difference, then why are we bothering
11 even looking at areas of normal operations?

12 What I am saying is, you concede there is
13 a value in the use, you concede you look at
14 alternatives or you consider alternatives, you concede
15 that they have different effects, Mr. Young, I don't
16 know why, if you are doing all this anyway, simply
17 recording the choices that you made is such a big deal.

18 MR. YOUNG: A. I think Mr. Innes was
19 heading in the fact that we really want to focus our
20 resources. We have limited resources as far as the
21 actual planning of roads, and I think if we identify
22 the values and where there is concerns we can focus our
23 effort to protecting those values and the environment
24 associated with those values.

25 I think we want to, as Mr. Innes said, if

1 there is a road within a logging operation, we feel we
2 can best take our resources and focus those where there
3 is a concern, where there is a value. I guess that's
4 what I'd submit, that we want to focus and put those
5 resources where they best protect the environment.

6 Q. Well, I think, Mr. Young, we are just
7 going to have to continue to disagree with this. I can
8 see I am not about to have the conversion of Saul of
9 Damascus.

10 MR. COSMAN: On the road to Damascus.

11 MR. CAMPBELL: Yes, secondary or
12 otherwise.

13 Q. Mr. Innes, I want to go to come back
14 to you. There has been a real focus on these
15 guidelines and the consideration of the guidelines by
16 the committees. There has been a real focus in the
17 commentary that you've made about ensuring that the
18 guidelines are based on science.

19 I want to come back to something you said
20 in testimony and I will remind you of it. I think it
21 was at page 39597 of the transcript. What you said
22 there was you wanted to ensure that the guidelines
23 reflected both the best of science and changes in
24 social values.

25 I don't want that change in social values

1 part dropped, I guess. You would agree that that is an
2 important aspect of the consideration of guidelines?
3 You've raise it there, we have tended to focus on the
4 science, but we have to worry about the change in
5 social change as well.

6 MR. INNES: A. You may have missed
7 another part of the testimony, Mr. Campbell. They
8 should be based upon three things, science,
9 environmental impact acceptability and societal
10 acceptability. So there is three components in there.

11 Q. All right. And I take it from that
12 that you would agree that the guidelines require an
13 accommodation or tradeoff in some cases between - and I
14 am going to focus for the moment just on two of the
15 three aspects - they might require a tradeoff in some
16 cases between societal values and the sciencenec?

17 A. Yes, that's quite true, Madam Chair.
18 We are dealing with a public resource and what's done
19 there has to reflect societal acceptability.

20 Q. By way of an example, just by way of
21 a hypothetical I guess, it may be in some
22 circumstances, for instance, in the use of buffer
23 zones, use of spray buffer zones, that larger buffer
24 zones might well have to be put in place because of a
25 societal concern as opposed to what the strict science

1 might indicate is absolutely necessary?

2 A. That's a possibility, Madam Chair,
3 yes.

4 Q. In your committee structure, do you
5 see the role of the committee that considers those
6 sorts of things as being decision making or advisory to
7 government?

8 Do you intend to clothe it with any
9 decision-making authority?

10 A. We testified, Madam Chair, that the
11 committees are advisory. The decisions rests with
12 government.

13 Q. All right. Would you agree -- just
14 on a slightly different point, would you agree with a
15 general proposition in a guideline in consideration of
16 guidelines that it probably isn't wise to set a
17 guideline at the absolute minimum level of protection
18 that the science would indicate because that simply
19 leaves no room for operational problems or mistakes;
20 you shouldn't just cut it to the bone?

21 A. I would think that will probably be
22 true, Madam Chair, although I suspect it would have to
23 be explained in the science as to what the risk
24 involved, if there was a risk, would entail and what
25 the safety factors should be as appropriate.

1 Q. And I agree with all of that, but as
2 general principle it's a fair proposition?

3 A. As a general principle, yes.

4 Q. All right. Now, I want to touch a
5 little bit again on the question of feedback. If I can
6 take you to page 19 of your Exhibit 1271 which is, I
7 believe, your terms and conditions.

8 I think you have agreed, Mr. Innes,
9 earlier that in order for a feedback loop of the kind
10 that you talk about throughout your testimony to work
11 you need to learn from the results of the actions
12 taken; that is, you need to know what in fact happened
13 as a result of the actions taken and then you can
14 adjust your future actions in light of that knowledge;
15 that's fair?

16 A. That's correct.

17 Q. And looking at your -- at the
18 paragraph under -- I guess it's just above the 2.4.5
19 paragraph, looking at the paragraph above that, you
20 make the following statement:

21 "Data collection through such things
22 as efficacy studies, environmental
23 effects monitoring, compliance monitoring
24 and an analysis of technical aspects of
25 management is an ongoing process."

1 First, just by way of explanation, what
2 do you mean by efficacy studies?

3 We have used the term effectiveness. Can
4 I read efficacy study as saying a study that allows you
5 to assess whether the guideline or manual is being
6 effective in achieving the objective?

7 A. That's quite fair if you translate it
8 that way, yes.

9 Q. And would you agree that it is only
10 by doing this kind of work that it is possible to
11 assess the benefits of the manuals and guidelines on an
12 ongoing basis and to adjust them accordingly?

13 A. Yes, I would agree with that.

14 Q. So you need efficacy studies, you
15 need compliance monitoring and effects monitoring?

16 A. Yes, correct.

17 Q. Now, with that I'd like to take you
18 to the exhibit that Mr. Freidin filed this morning,
19 Exhibit 1286, and the last page. Have you got that?

20 A. I have that, yes.

21 Q. On the last page of that, which Mr.
22 Sutterfield has kindly numbered in my copy as No. 7,
23 there is a heading Effectiveness Program that has no
24 entry against it.

25 I was rather interested in that in that

1 it seems to me that especially in the situation as we
2 have here where there is a deviation from the
3 guideline, if one is going to learn anything isn't it
4 necessary to have some program in place to assess
5 whether the practices that have been undertaken that
6 deviate from the guidelines are in fact effective down
7 the road in preserving this osprey nest?

8 Is this a heronry or an osprey nest?

9 MR. MUNRO: A. A heron rookery.

10 Q. Heronry, excuse me, in preserving
11 this heronry? Don't we need something about
12 effectiveness in this program in order to determine
13 whether the deviated prescription works?

14 MR. INNES: A. I'm having difficulty
15 with that one, Madam Chair. We are talking about a
16 deviation from a guideline in this case and I think Mr.
17 Campbell is suggesting there should be an effectiveness
18 program undertaken for this deviation to see whether it
19 was effective in doing what it was supposed to do.

20 Q. Let me see if I can simplify this
21 because I don't -- to say an effectiveness program
22 makes it sound much grander than I think what in fact
23 we are suggest.

24 In part 4 on this page 7 we have got a
25 compliance program and the area inspection reports are

1 going to be used presumably to see whether what was
2 done was, in fact, what was proposed, whether the thing
3 has been complied with.

4 Don't you also want to take a look also
5 some years down the road or at some appropriate time,
6 depending on what the biologist tells you is an
7 appropriate period of time, as to whether in fact the
8 heronry is still there and whether the prediction that
9 you made that it could adapt in this way quite
10 satisfactorily in fact was true, and simply is the
11 heronry still there and does that have anything to do
12 with the prescription?

13 I don't mean anything more complicated
14 than that. Now, in that context, why would you not --
15 can you think of any reason you wouldn't want to have
16 some kind of feedback loop to learn from your deviation
17 in the prescription you've put forward?

18 A. I would think it appropriate to have
19 something that says results. Effectiveness is, to use
20 the term you use, much grander than perhaps what was
21 intended, but did the -- if it is possible to put down
22 results and hopefully relate those results to the
23 implementation of the program, yes, that would be
24 desirable to do that.

25 Q. All right. I have three brief areas

1 left I think. It has taken a little longer than I had
2 hoped.

3 I would like you to go to your term and
4 condition 18 and 19 and it can be found at page 35 of
5 Exhibit 1271. I think we are there, aren't we? We are
6 in that exhibit, if we can go to page 35 we will find
7 term and condition 18 and 19.

8 A. Yes.

9 Q. I wasn't quite clear, 18 seems to
10 say -- it says that where there is a prescription
11 containing a value that involves the use of the fish
12 guidelines, the use of the guidelines shall be recorded
13 in the supplementary documentation.

14 Would you agree with me that that one,
15 having adopted some sort of index system which would
16 identify the guideline, that term and condition isn't
17 required specifically for the fish guideline, it would
18 be caught in that general process?

19 A. I think it would, Madam Chair. As we
20 explained yesterday, both 18 and 19 are a direct -- are
21 exactly the same as the MNR terms and conditions and
22 they are included in here because we thought that that
23 was agreed to -- that was an agreement reached between
24 the Ministry of the Environment and the Ministry of
25 Natural Resources and these two guidelines reflected

1 something that was already agreed to.

2 Q. I don't disagree that you need to do
3 these things for the fish guidelines. I am just
4 suggesting that if we adopt this kind of approach that
5 we talked about it would automatically pick up 18 as a
6 practical manner?

7 A. I agree with that.

8 Q. With respect to 19, as I understand
9 your proposal, it's that deviation reporting would
10 apply to all guidelines not simply to fish guidelines?

11 MR. MUNRO: A. That's correct.

12 MR. INNES: A. That's correct.

13 Q. To the extent that it applies to all
14 guidelines, it is fair to say that 19 doesn't need to
15 be so specific about the fish guidelines because it is
16 already covered by the proposals that are put forward
17 in this hearing for deviation reporting?

18 A. That's correct.

19 Q. In your terms and conditions, if you
20 would turn, please, to page 54 in terms and conditions
21 62 to 66. Can you explain there, please, the rationale
22 for proposing that the class environmental assessment
23 document be amended as opposed, for example, to the
24 Timber Management Planning Manual?

25 A. Madam Chair, Mr. Martel, in going

1 through the environmental assessment document, we have
2 found things in there that seem to be in direct
3 conflict with what we were proposing as an Industry
4 course of action or an Industry initiated course of
5 action and as a result tried to draw those to the
6 Board's attention, that there were major differences in
7 there.

8 Now, whether it's a procedural matter
9 that the environmental assessment document stand as is
10 and be modified by acceptance of terms and conditions
11 or the Board's ruling, I am not precisely clear and I
12 will have to ask my legal advisor as to what the
13 correct procedure could be or the range of procedures
14 could be.

15 The intent was to draw to the Board's
16 attention that there were changes in the document if
17 the proposal you have before you was brought forward.

18 Q. Let me put forward an alternative
19 approach which is, rather than spending time amending
20 the Class Environmental Assessment Document, the Timber
21 Management Planning Manual goes through some process of
22 incorporating into it the terms and conditions imposed
23 by this Board, be they to incorporate your planning
24 process or something else, would that equally meet your
25 objectives?

1 MR. COSMAN: I can answer that and just
2 indicate that that is certainly an alternative that we
3 would explore and hopefully all parties will have a
4 common base for how to deal with this before the end of
5 the hearing.

6 MR. CAMPBELL: Q. All right. Now
7 finally, if we assume, then, that it is the Timber
8 Management Planning Manual that will be focused on in
9 terms of the document that gets amended by whatever
10 decisions this Board comes to, let's just take that as
11 an assumption for the purpose of this question, if the
12 would Board decision says that a planning process is to
13 be amended along certain lines set out in the decision
14 and required the proponent to incorporate appropriate
15 changes into the planning manual, it has occurred to
16 the Ministry of the Environment that there may be a
17 potential for disagreement as to the whether the Timber
18 Management Planning Manual in its redrafted state
19 actually reflects the term and conditions.

20 I would like a view from the Industry as
21 to whether it would have any objection to the MOE
22 suggestion in its terms and conditions that in the case
23 of dispute as to whether the timber management planning
24 manual has fully incorporated the Board's decision
25 appropriately that the Board be the arbiter to decide

1 tha at the end of the day; that is, the matter might
2 have come back to the Board to have particular matters
3 decided?

4 Would that be a process that the Industry
5 could agree with or seems to the Industry to be a fair
6 way to settle those kinds of differences?

7 MR. COSMAN: Madam Chair, again I think
8 this calls in part for a legal answer. Our position is
9 that if the Board ordered that the timber management
10 planning manual be amended to conform with the terms
11 and conditions approved by the Board, then as a matter
12 of law it would have to be.

13 I'm not sure whether we can compel this
14 Board as a matter of law to return at some six months,
15 one year or whatever to be the arbiter of that dispute.
16 That's my only concern with respect to that particular
17 matter. I like the idea but, again, it raises a matter
18 of legal concern and that is the only point that I make
19 at this time.

20 MR. CAMPBELL: All right. We put have
21 forward, Mr. Cosman, the term and condition that
22 contemplates --

23 MR. MARTEL: You are talking about a
24 different panel, I would presume, Mr. Campbell.

25 MR. CAMPBELL: No, I'm not. Presumably

1 this panel will be the best one to know what its
2 decision is in the case of a dispute.

3 MR. MARTEL: With a shot gun.

4 MR. COSMAN: I think we are going to have
5 to get a court order, Mr. Campbell.

6 MR. CAMPBELL: Well, I have been through
7 that on these matters before.

8 In any event, The Ministry of the
9 Environment has put forward a suggestion for that. I
10 take it, Mr. Cosman, from your comments that at least
11 at this point in time it is the Industry position that
12 there is -- it doesn't at this point in time take an
13 objection to that method of dealing with that potential
14 problem.

15 MR. COSMAN: Subject to the legal
16 concerns that I have expressed we don't.

17 MR. CAMPBELL: And those legal concerns
18 are satisfying yourself that this can be done in an
19 appropriate way; that is, in a proper legal way?

20 MR. COSMAN: Yes.

21 MR. CAMPBELL: Thank you. Thank you,
22 Madam Chair. Those are all my questions on behalf of
23 my client with respect to this panel, subject to my
24 just checking with my friends.

25 Now, on behalf of Mr. Sutterfield and

1 myself, we wanted to ask Mr. Innes whether he had given
2 any instructions to his firm not to live up to certain
3 arrangements resulting from fishing derbies conducted
4 over a year ago and I remind you, Mr. Innes, that you
5 are under oath.

6 MR. COSMAN: Madam Chair, I instruct Mr.
7 Innes not to answer that question, but since it
8 involves a contract made by Mr. Cassidy I would ask you
9 to put it on the agenda for your visit to the Nipigon
10 Forest.

11 MR. INNES: We will seek independent
12 legal advice on that, Madam Chair.

13 MADAM CHAIR: Thank you, Mr. Campbell.

14 MR. CAMPBELL: Thank you, Madam Chair.

15 MADAM CHAIR: The Board needs a break,
16 Mr. Cosman.

17 MR. COSMAN: So do I.

18 MADAM CHAIR: How about you? How long do
19 you need to prepare?

20 MR. COSMAN: I am ready after ten
21 minutes. I am ready to go.

22 I can tell you that Mr. Campbell's
23 cross-examination shortened rather than lengthened my
24 re-examination and I will definitely be done under an
25 hour.

1 MADAM CHAIR: All right. Thank you, Mr.
2 Cosman. We will be back in 15 minutes.

3 ---Recess taken at 4:55 p.m.

4 ---On resuming at 5:10 p.m.

5 MADAM CHAIR: Please be seated.

6 Mr. Cosman?

7 MR. COSMAN: Thank you, Madam Chair.

8 Madam Chair, just a housekeeping item. You asked to
9 have confirmed the exhibit number for the Industry
10 overview document. That's Exhibit 1114.

11 MADAM CHAIR: Thank you, Mr. Cosman.

12 RE-DIRECT EXAMINATION BY MR. COSMAN:

13 Q. Now, first of all, Panel, I have
14 three questions arising out of Mr. Hanna's
15 cross-examination and I address this to the panel
16 itself and anyone may answer.

17 You were questioned about what or how
18 different companies are developing different kinds of
19 GIS systems and how standardization might take place
20 and I believe that there was some reference by Mr.
21 Munro in his answer to some work to coordinate that.

22 Is there a committee of the Ministry of
23 Natural Resources and Industry initiated by the
24 technical and development unit of the MNR out of
25 Thunder Bay that is working on making GIS system

1 information available and standardizing the format?

2 MR. MUNRO: A. Madam Chair, Mr. Martel,
3 yes, there is a group being put together under the TDU
4 of Thunder Bay and it involves a number of companies
5 and a number of Ministry staff.

6 That group started off small and it has
7 been continuously expanding. Recently Boise Cascade
8 Kenora was added on, I think Domtar was added on, I
9 think perhaps Kimberly-Clark might be represented. I
10 haven't looked at the recently, but there is a
11 committee and it is being expanded all the time.

12 MR. INNES: A. I think Abitibi-Price is
13 represented as well.

14 Q. Thank you. Now, Mr. Innes, you have
15 pointed out in responses to questions from Mr. Hanna
16 that the committee structure, the tri-level committee
17 structure that Industry proposes is to be advisory and
18 non-voting and my question to you is, why should the
19 local, regional and provincial committees be non-voting
20 committees?

21 MR. INNES: A. They should be non-voting
22 in our opinion, Madam Chair, Mr. Martel, because we are
23 not looking for a given decision from these bodies,
24 rather we are looking for a range of advice, we are
25 looking for a depth of understanding of problems and we

1 feel that MNR will obtain better advice if they
2 appreciate the full range of discussion, if they
3 appreciate the differences, the pluses and minuses in
4 these and are not given solely a decision made on a
5 five/four split or some such voting system.

6 Also, too, since there are -- there is
7 representation on these committees from individual
8 interest groups. We would expect that those people
9 would bring the flavour from their individual interest
10 groups and represent the interest at a much broader
11 level geographically and as a result the committee
12 doesn't have to have a vote on this.

13 Q. Mr. Innes, on another point. Mr.
14 Hanna cross-examined I think a number of the panel
15 members on asking if certain U.S. policies and
16 procedures had been examined or used and Mr. Hanna also
17 relied very heavily in his cross-examination on Dr.
18 Baskerville's views.

19 I would like to ask you to turn to
20 Exhibit 1218, if I may.

21 A. Mr. Cosman --

22 Q. That is the Baskerville -- that is
23 the proceedings of the Standing Committee on Forestry
24 to which Mr. -- before which Dr. Baskerville was a
25 witness.

1 A. Just a moment, please. Yes, I have
2 that.

3 Q. Now, if we can turn to page 11 of
4 that, please. In the left-hand column, did Dr.
5 Baskerville --

6 MR. MARTEL: Page 11:11?

7 MR. COSMAN: It is page 11:15. I'm
8 sorry, 11:15.

9 Q. In terms of questions put to you or
10 put to the panel on whether or not certain procedures
11 ought to be applied from the U.S., did Dr. Baskerville
12 have anything to say as to who Canada or what country
13 should emulate in the development of its forest
14 management policies?

15 MR. INNES: A. Yes, Madam Chair. He
16 suggested at the bottom of page that he would emulate
17 Canada. The reason is we have a unique structure in
18 the ownership of the resource and the ability to tax
19 use of the resource.

20 Q. Could you read the next sentence of
21 that answer?

22 A. Yes.

23 "I do not think that there is anybody
24 else who comes close enough to our
25 structure where we could actually copy

1 their policies."

2 I happen to agree with that sentiment,

3 Madam Chair.

4 Q. Does the panel generally agree with
5 that?

6 MR. MUNRO: A. Most definitely.

7 MR. YOUNG: A. Yes.

8 MR. SUOMU: A. Yes.

9 MR. FRY: A. Yes.

10 Q. Now, I would like to turn to Mr.
11 Reid's cross-examination on behalf of the Ontario Metis
12 and Aboriginal Association and I just have one
13 question.

14 Mr. Reid was cross-examining the panel as
15 to the experience of the panel in the planning area,
16 timber management planning area, with respect to the
17 experience that the panel has had in dealing with
18 various member associations of the Ontario Metis and
19 Aboriginal Association, and I believe the answer that
20 the panel gave to his question is that there has no
21 notice given to any of these associations in the past,
22 at least the five of you were aware of.

23 I am going to ask just a very specific
24 question. Have any Metis and Aboriginal Association
25 member approached you or your company in the timber

1 management planning process and asked to play a role in
2 the timber management planning process?

3 MR. INNES: A. Not in my case, Madam
4 Chair.

5 MR. FRY: A. Not in my case.

6 MR. MUNRO: A. No.

7 MR. SUOMU: A. In terms of the public,
8 those individual who have approached -- or have
9 approached the plan author, I'm not so sure that we
10 have or haven't, but they have not identified
11 themselves as such.

12 Q. You are saying if an individual
13 happened to be a member of that association you
14 wouldn't know it?

15 A. We would not have known it.

16 Q. all right. Now, if in the future
17 such a member association did approach you and ask you
18 to take -- and told you that they would like -- told
19 you as plan authors that they would like to play a role
20 in the timber management planning process, would you
21 give them notice and involve them in the process?

22 MR. INNES: A. Certainly.

23 MR. FRY: A. Yes.

24 MR. MUNRO: A. Most definitely.

25 Q. With respect to Mr. Freidin's

1 cross-examination, I would like to make reference to
2 Exhibit 1276 and in that regard Mr. Freidin, quite
3 properly doing his job, asked you a number of
4 questions, Mr. Fry, as to what wasn't marked on that
5 particular exhibit and I noted down two questions that
6 he put. One had to do with whether or not the
7 dimensions of the moose corridor were designated and I
8 believe your answer was: Yes, and it is shown on
9 Exhibit 1276.

10 MR. FRY: A. That's correct.

11 Q. And the only other question in terms
12 of what was missing from that, he asked you whether or
13 not the moose corridors and the prescriptions for them
14 were themselves identified and you indicated that they
15 were not having regard to the specific moose corridors
16 on Exhibit 1276?

17 A. That is correct.

18 Q. Apart from that, the other values and
19 prescriptions were on Exhibit 1276, but my question to
20 you very simply is, would there be any objection on
21 your part to having the moose corridors designated by a
22 similar kind of tab with the prescription as has been
23 done with respect to the other values?

24 A. No, that could be easily handled, I
25 believe.

1 Q. And if that were done, would then all
2 of the values identified be shown on Exhibit 1276?

3 A. I believe the only values that would
4 not be labelled would be those values associated with
5 protection of water quality and those two could be
6 labelled.

7 Q. Thank you. So is there anything --
8 let me put it this way: If you had a schedule of area
9 of concern documentation in the format that the
10 Ministry now requires, is there anything by way of
11 prescription in that documentation that could not be
12 presented in the form that you have presented it on
13 that operational map?

14 A. Not that I'm aware of, no, I believe
15 everything could be covered.

16 Q. Now, Mr. Munro, with respect to a
17 question from Mr. Freidin, I believe, in comparing
18 Table 5B and Table 4.12, he indicated that in Table
19 4.12 of the Ministry each area of concern is listed and
20 a prescription is listed and he said with respect to 5A
21 and 5B of the Industry planning system the AOC is not
22 and the prescription is not -- are not all listed, but
23 only those that are in the three categories discussed?

24 MR. MUNRO: A. That's correct.

25 Q. All right. My question to you and

1 maybe this has been covered in another fashion, but why
2 not include everything?

3 A. The main reason why we wouldn't want
4 to include everything is in many cases it would be
5 unnecessary since it's routine application of the
6 guidelines.

7 I think Mr. Campbell had a good idea in
8 what he presented when he was cross-examining us, that
9 there might be a way of doing that would alleviate some
10 of Mr. Martel's concerns and provide an easy, quick
11 reference point for AOCs and if the identification of
12 the guidelines had in fact been used, but the actual
13 prescription, we don't see any merit in writing that
14 out at length great on another piece of paper other
15 than the map.

16 Q. Apart from their being a lack of
17 merit in writing it out, as you just testified, are
18 there any other disadvantages?

19 A. It just increases the complexity and
20 the volume of paper that people have to deal with and
21 it doesn't allow them to focus their attention on
22 specific things.

23 So it makes -- our proposal will make for
24 a much more concise understanding of the plan which
25 would be more meaningful to the public in terms of

1 input and their actual review of the document.

2 MADAM CHAIR: Mr. Munro, the theme of
3 many of the cross-examinations by the various parties
4 has been, Industry could add this to your proposal or
5 you could make another copy of this or you could add a
6 computerful of this information, it's possible to do
7 all that, but a very major aspect of your proposal is
8 that you are trying to cut down on the information
9 flow.

10 MR. MUNRO: Most definitely.

11 MADAM CHAIR: At some point conceivably
12 your proposal could be accepted, let's say the Board
13 accepted your term and conditions, your proposal, but
14 they attached to it everyone else's suggestions about
15 adding this thing and the other thing. In effect, it
16 would -- at some point your proposal has got to be
17 unacceptable to you.

18 I mean, the way that you have put it
19 before the Board. At some point you have got to say:
20 Well, that's not our proposal anymore because you have
21 taken everything we have suggested and you've piled
22 everything else on top of it, but I don't know if the
23 Board will get a very clear indication at any point
24 that that would change your proposal. We don't have
25 that indication right now because you have agreed with

1 some parties that's a sensible thing to do. It's not
2 clear.

3 MR. MUNRO: I think in all cases, Madam
4 Chair, we agreed to look at them and see what impact it
5 would have and we intent to do that. If it gets to the
6 point where in fact it is not our proposal anymore, we
7 will certainly have to take another look at it and
8 revise our terms and conditions.

9 MR. COSMAN: Q. Is your proposal to the
10 extent that -- sorry, Mr. Innes.

11 MR. INNES: I think Mr. Martel wanted --

12 MR. COSMAN: Sorry, I missed something.

13 MR. INNES: Did you wish to ask a
14 question, sir?

15 MR. MARTEL: No, I just said you might
16 establish another panel to figure it all out.

17 MR. INNES: If I may add to Madam Chair's
18 question. There is one very definite point, we do not
19 agree with the documentation process of the AOCs except
20 through the enhanced planning process we are talking
21 about, Madam Chair.

22 It is on the map, we think the other
23 documentation is excessive. That's a very clear one
24 right there where we don't want to step over that line.
25 That's a massive amount of documentation in our

1 understanding.

2 MADAM CHAIR: Yes, it is clear you
3 wouldn't want to do that, but you might decide to
4 follow the suggestion of indexing various AOCs, you
5 might agree in negotiations that aren't before this
6 Board that you would do 15 other things to your
7 proposal in the AOC process and the only way we are
8 going to see that is obviously when it comes back as
9 some form of an agreement in front of us.

10 MR. INNES: Yes, I hope they will find a
11 way to handle that to the satisfaction of everybody.

12 MR. COSMAN: Q. Let me ask the panel
13 this arising out of the question from the Chair.

14 Where you agreed to add certain
15 documentation, such as in the cross-examination on
16 behalf of the Ministry of the Environment, where you
17 actually agreed to do it, has your agreement to add
18 this documentation undermined the planning process that
19 you have put forward as an integrated system?

20 MR. INNES: A. I don't think it has,
21 Madam Chair. For example, you mentioned the index of
22 values, I think that's useful, it's very easy to do, it
23 is quite compact and it will allow whoever looking at
24 the plan to go directly to whatever they want to look
25 at, and I think that enhances rather than, for example,

1 undermines the planning process.

2 And where we had any doubt whatsoever,
3 what we agreed to was to look at it rather than to
4 adopt it and in some cases, for example, the inclusion
5 of supplementary documentation with the plan to a party
6 who want to delve into it, the documentation is there,
7 it's a matter of just packaging it and sending it with
8 that plan, for example.

9 Q. Because of the Industry's
10 understandable interest of reducing paper and for that
11 matter the public's interest in reducing paper as well,
12 does the planning system that you are proposing, even
13 with the additions that you have agreed to in your
14 evidence, accomplish that object of reducing paper?

15 MR. MUNRO: A. Madam Chair, Mr. Martel,
16 the potential is certainly there to reduce the paper
17 load and I think the potential is there to have a
18 better system that's more understandable.

19 I guess the one reservation that I would
20 have to add is similar to that expressed by Madam
21 Chair, is that if people take it and add components to
22 it, it might not have any reduction in paper, in fact
23 there might be more paper and that's why we want to
24 sell it as a complete system as opposed to having
25 things added to it.

1 Q. But on the basis of what you have
2 proposed to date and what you have agreed to add, is it
3 an improvement over that which is presently in place?

4 A. Yes, we believe it is.

5 Q. Mr. Fry, you were asked a question
6 by, I believe it was, Mr. Freidin and the question was
7 whether you can say or could not say if the public was
8 satisfied with explanations at open houses as to, for
9 example, how to deal with moose management and you
10 indicated you couldn't say whether the public was
11 satisfied or not, but you could say that they
12 understood the system better.

13 My question to you: Can you say if the
14 public was dissatisfied with your explanation based
15 upon your experience?

16 MR. FRY: A. Based on my experience, I
17 don't recall every having received an expression of
18 dissatisfaction.

19 Q. All right. With respect to -- Mr.
20 Munro, with respect to the differences between the
21 planning committee the Ministry proposes and the
22 combined technical committee and local advisory
23 committee that Industry proposes, I would like to ask
24 several questions.

25 Now, we have already heard from you that

1 you will consider making some changes to formalize the
2 coordination between members of the technical committee
3 which, in your evidence, do not meet formally except as
4 required?

5 MR. MUNRO: A. That's correct. We will
6 take a look at that.

7 Q. Subject to that, with respect to
8 technical planning, why do you say that it's more
9 efficient to deal with technical issues with individual
10 technical advisors rather than by means of a committee
11 of -- how many meeting?

12 A. Usual a planning team would be eight
13 to ten people.

14 Q. All right.

15 A. We feel it is much more efficient
16 because you can actually deal on a professional basis,
17 you can establish a working relationship, you can
18 certainly understand the other professionals view point
19 much better, you don't have polarization in terms of
20 positions; we are there with a common goal, plan that
21 activity, and the practice has been it works and it
22 works well when you can sit down with a biologist or a
23 profession with a common goal to come out with a
24 planned activity at the end of the exercise and we
25 found them quite fruitful.

1 Q. With respect to detailed technical
2 planning, is all that done at the present time in a
3 committee or is there the kind of one-on-one that you
4 proposed as well?

5 A. From my experience, most of the
6 technical planning has been done one on one with the --
7 i.e., if it is a wildlife biologist, our foresters sit
8 down with him and work through the plan and then that's
9 taken to a planning team.

10 Q. So how does your proposal then, with
11 respect to the technical committee and the planning
12 committee, differ?

13 If under the present system there is lots
14 of detail, technical planning, how does that differ
15 from what you are proposing?

16 A. I think what we agreed to look at was
17 formalizing at some point in time that it will be taken
18 to a Ministry planning team per se that the district
19 manager would represent. So it's not a whole lot
20 different than what we currently do in practice.

21 MR. INNES: A. I would like to add to
22 that, Mr. Munro. One of the key points, Madam Chair,
23 Mr. Martel, is that the planning team operates
24 differently across the province, management unit or
25 district by district to a very large extent, and Mr.

1 Munro's experience of one on one conversations with
2 technical experts in MNR has not been our experience in
3 some of the areas in terms of it may be a case where
4 the planning team discusses things, the technical
5 expert leaves the planning team and comes back to the
6 next meeting with an answer.

7 By formulating it the way we have and
8 encouraging this direct contact it works in a much more
9 direct fashion in terms of understanding what the
10 technical ramifications are and you have a better
11 rapport, as Mr. Munro mentioned, with the individual
12 technical expert.

13 So there is variability and what we are
14 trying to drive towards is the situation where you work
15 within one and then we have agreed there has to be a
16 place where this is integrated, and Mr. Martel has made
17 some valuable suggestion as to how we can approach
18 that.

19 One thing that happens, in my experience,
20 is it's difficult to find ownership in terms of some of
21 the -- a biologist. In our process, the district
22 manager appoints a technical expert to deal with the
23 plan author and that automatically gives that person
24 some ownership in the outcome.

25 One of problems we have experienced to

1 date is they do not feel, from my opinion, that they
2 have ownership and there is the possibility that what
3 we do will be changed or modified at a different level.
4 So by assigning and putting that individual's name to
5 say that is your function, you will have a much more
6 efficient exercise.

7 Q. Mr. Munro, another area. You
8 indicated that in the preplanning year under the
9 Industry's proposed system you will, among other
10 things, review the eligibility map but that you could
11 not discuss the proposed operations or specific
12 prescriptions in that preplanning year.

13 Now, my question to you is if a value of
14 controversy was identified in the preplanning year,
15 could that have an impact on the area that the plan
16 author could select to operate in?

17 MR. MUNRO: A. Yes, it certainly would
18 and the plan author would take a look at the values and
19 concerns that have been expressed and plan his or her
20 activities accordingly. That's a common practice if
21 you know there is going to be a problem, you anticipate
22 it and plan appropriately.

23 Q. Mr. Suomu, with respect to bump-up
24 you were asked if you would -- if all parties concerned
25 agreed that going through the planning process would

1 not resolve a problem, that it might be appropriate to
2 go to bump-up without going through the planning
3 process.

4 Would you anticipate many situations
5 where all parties agree that the planning process for
6 addressing concerns should not be utilized?

7 MR. SUOMU: A. Madam Chair, no, I do not
8 visualize many of these instances at all. In fact, I
9 am hard put to think of one where at least the process
10 would not be followed, but in the event that the
11 parties polarized to the point where it was obvious
12 that there wasn't going to be any resolution -- and I
13 think our whole process was designed so that we could
14 identify these and plan accordingly and there wouldn't
15 be any point in wasting time going through the process.

16 The whole reason for the exercise in
17 leaving bump-up until the end was to attempt a
18 resolution. And to that end, if it's obvious that it's
19 not going to work, then I guess it would be identified
20 fairly shortly and I guess the process could be
21 circumvented, but that certainly wasn't our intent and
22 I just can't think of any example offhand right now.

23 It is possible that Temagami might be one
24 which you know up front that you are not going to reach
25 a decision.

1 Q. Does your opinion remain the same
2 that bump-up should be considered by the Minister of
3 the Environment as a last resort in resolving problems?

4 A. Yes, I -- yes.

5 Q. To the panel as a whole, some of you
6 or many of you gave evidence as to information that
7 companies are obtaining from permanent sample plots
8 which are designed to indicate successful prescriptions
9 or otherwise.

10 I would like to ask you whether the
11 results of that sample plot experience has been used or
12 is likely to be used in the future in amending
13 silvicultural guides, or can you see a role for it?

14 MR. INNES: A. Madam Chair, in my
15 company's experience we have used information collected
16 from our surveys from our plots that we have put in to
17 change our practices in terms of how we do things.

18 An example of that would be we found in
19 Thunder Bay where we use paper plots for our seedlings,
20 that planting these about an inch below the surface
21 level of the soil provides much better survival and
22 growth than what we previously did by planting them
23 flush with the surface or slightly above it. We
24 modified our practice accordingly through information
25 which we collected.

1 I do know of instances whereby long-term
2 information from company sample plots has been utilized
3 by government and other members of an industry to look
4 at growth progression and what happens to those.

5 Q. Mr. Young, Mr. Campbell
6 cross-examined you with respect to secondary roads and
7 the utility of documenting the analysis of alternatives
8 and he made the point to which you agreed that the use
9 of a road is itself a value.

10 If someone or if anyone says that they
11 are interested in the use of a road and therefore --
12 would that, therefore, be identified as a value by the
13 plan author in the planning process?

14 MR. YOUNG: A. Yes. As we see it, we
15 are asking the public to come forward with values, if
16 you want to use the term, more broad sense with the
17 road.

18 We have made it very clear, Madam Chair,
19 Mr. Martel, that the onus is on the plan author to sit
20 down with that person that has a value and discuss the
21 formulation of that road with them. So we do dialogue
22 one on one during the formation of those road
23 corridors.

24 So, yes, there would be, if you want to
25 term the word value identified and we would work with

1 that person to develop prescriptions to address that
2 value.

3 Q. Now, if no one, no Ministry or no
4 other person has expressed an interest in the use of a
5 secondary road and if no value is otherwise affected,
6 is this a situation where you would not want to
7 document an analysis of alternatives?

8 A. For secondary roads, that's correct.

9 Q. And why would you wish not to
10 document -- not to take the time to document this
11 analysis in this situation?

12 A. As I explained to Mr. Campbell, we
13 feel that by focusing our effort on areas where it is
14 required, where there are values to protect, we are
15 really focusing our resources to protect or enhance
16 those values. So there is a focusing effect to protect
17 those values.

18 As we also outlined, secondary roads are
19 for a shorter time span and in many cases those
20 secondary roads are associated with operations and are
21 within harvesting blocks. So there is some planning
22 within those more harvesting blocks.

23 Q. Is there a financial consideration?

24 A. Yes, definitely. Secondary roads
25 have a less -- cost less to build than primary roads.

1 Usually secondary roads last for a duration of probably
2 six to ten years, where a primary road is definitely
3 ten years plus. So there is a time length and a
4 financial aspect also.

5 MR. COSMAN: Thank you. Those are my
6 questions.

7 MADAM CHAIR: Thank you very much, Mr.
8 Cosman.

9 Members of Panel 10, thank you very much.
10 You are excused.

11 MR. COSMAN: They can go home to their
12 families?

13 MADAM CHAIR: We appreciate all your
14 work. Yes, and your jobs.

15 MR. INNES: Just before we leave, Madam
16 Chair, thank you and Mr. Martel for agreeing to sit
17 late this evening. We certainly appreciate it.

18 MR. MUNRO: Much appreciated.

19 MADAM CHAIR: Well, we are adjourned now
20 until next Tuesday in Sault Ste. Marie. We will see
21 some of you there and for those who are staying behind
22 in Toronto we will be back October the 1st.

23 ---Whereupon the hearing adjourned at 5:45 p.m., to be
24 reconvened Tuesday, August 28, 1990 in Sault Ste.
Marie commencing at 2:00 p.m.

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